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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on foreign subsidies distorting the internal market

{SWD(2021) 99 final} - {SWD(2021) 100 final} - {SEC(2021) 182 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The European Union (EU) is closely intertwined with the global economy. With trade in goods and services worth EUR 5984 billion in 2019[1], it accounts for 16.4% of overall global trade. As a result, trade accounts for almost 35% of the EU's gross domestic product (GDP), with 35 million jobs in the EU dependent on exports. The flow of products, services and capital into and out of the EU contribute to its growth by enhancing competitiveness, creating jobs, stimulating innovation and opening up new markets[2].

In 2017 the EU28 was the destination for a third of the world's investment stocks and home to roughly 100000 companies owned by foreign entities[3]. Foreign direct investment (FDI) is a welcome source of employment (16 million jobs[4]), growth and competitiveness.

A strong, open and competitive single market enables both European and foreign companies to compete on merit in as far as a level playing field in the internal market is ensured. Accordingly, on 10 March 2020 the Commission presented a new industrial strategy for Europe[5], which mapped out a path whereby EU industry could lead the green and digital transitions on the basis of competition, open markets, world-leading research and technologies, and a strong single market. The EU is pursuing a model of open strategic autonomy[6] by shaping the system of global economic governance and developing mutually beneficial bilateral relations, while protecting its internal market from unfair and abusive practices. The Communication on the trade policy review adopted on 18 February 2021 set the direction for an open, sustainable and assertive trade policy, building on openness as a strategic choice while also being equipped with the tools to combat unfair trading practices.[7]

In recent years, foreign subsidies appear in some instances to have had a distortive impact on EU's internal market, creating an uneven playing field for competition. While there is still a general lack of reliable data on subsidies granted by third countries, there is a growing

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1 DG Trade *Statistical Guide*, August 2020, excluding intra-EU trade; https://trade.ec.europa.eu/doclib/docs/2013/may/tradoc_151348.pdf

2 *Report from the Commission on the implementation of the trade policy strategy – Trade for all: delivering a progressive trade policy to harness globalisation* (COM(2017) 491 final).

3 Eurostat, Foreign AffiliaTes Statistics (FATS), Foreign control of enterprises by economic activity and a selection of controlling countries (from 2008 onwards) [fats_g1a_08]. The 100 000 figure includes the United Kingdom as part of the EU-28. Preliminary data shows that this figure is not likely to change significantly for the EU-27. In 2018, an estimated 84 000 enterprises in the EU-27 were owned by foreign entities (excluding the UK), while in 2015-2017 there were around 18 000 UK-owned enterprises in other EU-27 countries.

4 Commission staff working document on *Foreign direct investment in the EU* (SWD(2019) 108 final), following up on the Commission Communication *Welcoming foreign direct investment while protecting essential interests* (13 September 2017).

5 Commission Communication, *A new industrial strategy for Europe* (COM(2020) 102 final), as updated in 2021. See also the Commission Communication, *The European economic and financial system: fostering openness, strength and resilience* (COM(2021) 32).

6 Commission Communication, *Europe's moment: repair and prepare for the next generation* (COM(2020) 456 final). See also the Commission Communication, *The European economic and financial system: fostering openness, strength and resilience* (COM(2021) 32).

7 Commission Communication, *Trade Policy Review – An Open, Sustainable and Assertive Trade Policy* (COM(2021) 66 final).

number of instances in which foreign subsidies seem to have facilitated the acquisition of EU undertakings, influenced investment decisions, distorted trade in services or otherwise influenced the behaviour of their beneficiaries in the EU market, to the detriment of fair competition[8].

In this context, foreign subsidies can take different forms, e.g. zero-interest loans, unlimited State guarantees, tax exemptions or reductions in respect of foreign investments or trade or dedicated State funding. In many cases, they would be problematic if granted by EU Member States and assessed under EU State aid rules.

Since 2017, the EU has been actively engaged in trilateral talks with the United States and Japan to improve multilateral cooperation in a number of key areas. In June 2018, the European Council gave the Commission a mandate 'to pursue WTO modernisation in pursuit of the objectives of making the WTO more relevant and adaptive to a changing world, and strengthening the WTO's effectiveness'[9]. In January 2020[10], senior trade representatives of the EU, US and Japan agreed on the need to strengthen World Trade Organization (WTO) rules on industrial subsidies. In this context, the EU intends to start work on developing WTO rules to address a range of competitive distortions due to state intervention in the economy, including industrial subsidies, as outlined in the Annex to the Communication on the Trade Policy Review.[11]

Considering the challenge to find a multilateral solution to subsidies within a reasonable timeframe, the Commission committed (as part of the new industrial strategy for Europe) to explore how best to strengthen the EU's anti-subsidy mechanisms and tools[12]. On 17 June 2020, the Commission adopted a white paper on foreign subsidies[13] to explore the issue, launch a public debate and propose possible solutions. The white paper and, in more detail, Section 2 of the impact assessment report accompanying the present proposal describe a legislative gap in EU competition, trade and public procurement rules, which effectively prevents the EU from taking action when foreign subsidies cause distortions in the internal market including by financing concentrations or procurement bids.

The white paper notes that, while the granting of support by Member State authorities is subject to EU State aid control, no comparable regime is in place for support granted by non-EU countries. This puts undertakings that engage in an economic activity in the EU without subsidies at a disadvantage vis-à-vis beneficiaries of foreign subsidies.

The white paper further identified problems linked to access to EU funding by operators receiving foreign subsidies, which could distort the competition for EU funds. The impact assessment accompanying this proposal notes that any Union measures addressing the

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[8] A recent report by the European Court of Auditors finds that certain subsidies granted by the Chinese state would constitute State aid if granted by an EU Member State, and notes that this 'difference in treatment can distort competition in the EU's internal market'; European Court of Auditors, 'The EU's response to China's state-driven investment strategy', *Review 03* (2020); https://www.eca.europa.eu/Lists/ECADocuments/RW20_03/RW_EU_response_to_China_EN.pdf

[9] European Commission, *Concept paper: WTO modernisation* (September 2018).

[10] Joint Statement of the Trilateral Meeting of the Trade Ministers of Japan, the United States and the European Union (Washington, D.C., 14 January 2020).

[11] Annex to the Commission Communication, *Trade Policy Review – An Open, Sustainable and Assertive Trade Policy* (COM(2021) 66 final).

[12] *A new industrial strategy for Europe* (COM(2020) 102 final), as updated in 2021.

[13] *White paper on levelling the playing field as regards foreign subsidies* (COM(2020) 253 final).

distorting effects of foreign subsidies in public procurement will apply to the EU budget expenditure under shared management distributed through public procurement. The direct management of EU funds is subject to the EU's Financial Regulation. The Commission will explore the possibility to propose to the co-legislators amendments to the Financial Regulation during the next revision, to take into account the impact of foreign subsidies. To the extent EU funding is distributed through public procurement under shared management, possible distortions would be addressed through the public procurement provisions of this proposal.

Recently, several Member States have made suggestions for action aimed at addressing the possible distortions from foreign subsidies[14]. In addition, the German Monopolies Commission has proposed a foreign State aid instrument to address the negative effects of foreign subsidies on the internal market[15].

The co-legislators have also raised the issue of foreign subsidies on several occasions. The Council referred to the Commission's white paper in its conclusions of 11 September 2020[16] and, in its conclusions of 1-2 October 2020[17], the European Council called for 'further instruments to address the distortive effects of foreign subsidies in the single market'. In its February 2020 report on competition policy[18], the European Parliament called on the Commission to 'investigate the option to add a pillar to EU competition law that gives the Commission appropriate investigative tools in cases where a company is deemed to have engaged in distortionary behaviour due to government subsidies or to have made excessive profits based on a dominant market position in its home country'. In a joint letter to Commission Executive Vice-Presidents Vestager and Dombrovskis and Commissioner Breton[19], a group of 41 Members of the European Parliament expressed strong support for an instrument to tackle 'companies from third countries that have received substantial state support'.

As announced in the Commission's work programme for 2020-2021, this proposal for a regulation therefore sets out the features of a new tool to address the regulatory gap and to ensure a level playing field in the internal market. It is also mentioned under point 3.2.6 of the

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[14] The Netherlands has suggested targeting undertakings that receive foreign subsidies or have an unregulated dominant position in a non-EU market, in order to prevent potentially disruptive behaviour; https://www.permanentrepresentations.nl/documents/publications/2019/12/09/non-paper-on-level-playing-field.
France, Germany, Italy and Poland have called for the Union's competition rules to be adapted, in particular to take account of the possible distortions created by foreign State support and protected markets; https://g8fip1kplyr33r3krz5b97d1-wpengine.netdna-ssl.com/wp-content/uploads/2020/02/Letter-to-Vestager.pdf.

[15] *Biennial Report XXIII of the Monopolies Commission ('Competition 2020')*; https://www.monopolkommission.de/images/HG23/Main_Report_XXIII_Chinese_state_capitalism.pdf

[16] Council of the European Union, *Conclusions on a deepened single market for a strong recovery and a competitive, sustainable Europe* (11 September 2020); https://www.consilium.europa.eu/media/45641/council-conclusions-on-a-deepened-single-market-for-a-strong-recovery-and-a-competitive-sustainable-europa.pdf

[17] *Special meeting of the European Council (1 and 2 October 2020) – Conclusions* (2 October 2020); https://www.consilium.europa.eu/media/45910/021020-euco-final-conclusions.pdf

[18] European Parliament, *Report on competition policy — annual report 2019* (A9-0022/2020; 25.2.2020); https://www.europarl.europa.eu/doceo/document/A-9-2020-0022_EN.pdf

[19] Letter to EU telecom and trade ministers and Commissioners Breton, Vestager and Dombrovskis (14.10.2020); https://reinhardbuetikofer.eu/2020/10/14/letter-to-eu-telecom-and-trade-ministers-and-to-european-commissioners-thierry-breton-margrethe-vestager-and-valdis-dombrovskis/

Communication on the trade policy review on strengthening the focus on implementation and enforcement and ensuring a level playing field.

- **Consistency with existing policy provisions in the policy area**

At present, there are no specific EU rules to address the distortive effects that foreign subsidies may have on the internal market. While the EU has a system of State aid control enshrined in Articles 107 and 108 of the Treaty on the Functioning of the European Union (TFEU), it applies only where an EU Member State grants financial support to an undertaking or group of undertakings, giving rise to an advantage that distorts competition and affects trade between Member States. The EU antitrust rules[20] prohibit agreements or concerted practices of undertakings having the object or effect of distorting competition in the internal market, and abuses of dominant positions by undertakings irrespective of their forms or the way they are financed. The EU merger rules[21] provide for a system of prior notification and approval for concentrations entailing permanent changes of control over undertakings above certain EU turnover thresholds irrespective of whether or not such concentrations may be financed by way of foreign subsidies granted.

This proposal addresses distortions on the internal market caused by foreign subsidies that fall outside the EU State aid, merger control and antitrust rules. It complements and is fully coherent with the existing competition rules. It addresses the detrimental effects of distortive foreign subsidies in the cases of concentrations and public procurement *ex ante*, without limiting the EU's ability to intervene *ex post* in other market situations, including in smaller concentrations and public procurement procedures.

The proposal is fully coherent with the EU public procurement rules. The EU Directives on public procurement[22] cover tenders that are expected to be worth more than a given amount. They are designed to ensure a competitive, open and well-regulated procurement market. They also ensure that EU companies have access to rapid and effective review. The present proposal is concerned specifically with distortions that foreign subsidies may cause to public procurement procedures within the EU. It therefore complements the existing rules.

- **Consistency with other Union policies**

The proposal is coherent with the new industrial strategy and the trade policy review in its contribution to ensuring the EU's competitiveness and open strategic autonomy, by strengthening its anti-subsidy mechanisms and tools. The proposal also takes into account the objectives of the European Green Deal. It will constitute a coherent, effective and proportionate framework for addressing distortions in the internal market that currently cannot be tackled.

[20] Articles 101 and 102 TFEU.

[21] Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ L 24, 29.1.2004, p. 1).

[22] Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, OJ L 94, 28.3.2014, p. 65.
Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC, OJ L 94 28.3.2014, p. 243
Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts OJ L 94 28.3.2014, p. 1

This proposal complements the amended proposal for the International Procurement Instrument (IPI)[23] aimed at encouraging trading partners to negotiate with the EU on the opening of their procurement markets to EU businesses. The IPI proposal, as presented by the Commission, aims at improving access to public procurement markets outside the EU. However, it will not tackle distortions of procurement processes in the internal market arising from foreign subsidies granted to undertakings participating in EU procurement markets[24].

The proposal is coherent with EU trade policy and complements existing trade instruments. The WTO Subsidies and Countervailing Measures (SCM) Agreement (at multilateral level), bilateral free-trade agreements and the EU anti-subsidy regulation[25] discipline the use of subsidies in their scope and regulate actions that can be taken to counter the effect of those subsidies. Measures to counteract unfair practices usually take the form of extra import duties to eliminate the injury of the subsidisation granted by other WTO countries. However, the EU anti-subsidy rules only address the injury caused by the import of goods into the EU that have benefitted from a foreign subsidy. At international level, the EU can bring litigation against a WTO member for breaches of the SCM Agreement, but the scope of the Agreement is also limited to trade in goods. The WTO General Agreement on Trade in Services (GATS) contains an inbuilt mandate to develop rules for subsidies in the area of trade in services, but no such rules have been developed to date.

This proposal complements the FDI Screening Regulation[26], the purpose of which is to determine the likely impact of FDI on security and public order by considering its effects on, among other things, critical infrastructure, technologies and inputs. In contrast, this proposal specifically tackles the issue of distortions to the level playing field caused by foreign subsidised investments in the internal market, including strategic industries, critical assets and technologies.

The proposal is aligned with other EU instruments, including the EU Charter of Fundamental Rights.

The proposal is also coherent with the targeted and tailor-made regulation of specific sectors, including the maritime technology and the aviation sectors[27].

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The proposed regulation would impose disciplines with regard to foreign subsidies that have a distortive impact on the internal market, including situations where a subsidised investor plans

[23] Amended proposal for a Regulation of the European Parliament and of the Council on the access of third-country goods and services to the Union's internal market in public procurement and procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries (COM(2016) 34 final, 29 January 2016). This proposal is being discussed in the Council.

[24] Following the call by the Commission and the European Council in March 2019 to resume the discussions, the co-legislators are currently engaged in constructive discussions on the IPI, on the basis of the 2016 amended legislative proposal from the Commission.

[25] Regulation (EU) 2016/1037 of the European Parliament and of the Council on protection against subsidised imports from countries not members of the European Union (OJ L 176, 30.6.2016, p. 55).

[26] Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (OJ L 79I , 21.3.2019, p. 1).

[27] As covered by Regulation (EU) 2016/1035 (which however does not apply as the conditions in Article 18 are not fulfilled), Regulation (EC) 1008/2008 and Regulation (EU) 2019/712.

to acquire an EU target or participate in an EU public procurement procedure. Article 207(1) of the Treaty on the Functioning of the European Union (TFEU) defines the scope of the Union's common commercial policy as encompassing *inter alia* measures to be taken 'in the event of subsidies', 'foreign direct investment' and trade in goods and services. Consequently, the proposed regulation falls largely within the scope of Article 207(2) TFEU, which provides for the adoption of measures defining the framework for implementing the common commercial policy.

At the same time, the proposed regulation may apply as well to certain activities performed by an entity already established in one Member State in another Member State, such as the acquisition of another entity in another Member State or the participation in a public tender in another Member State. To that extent, the proposed regulation may affect the right of establishment and the free movement of goods and services within the Union. In view of that the proposal should be based as well on Article 114 TFEU, which provides for the adoption of measures for the approximation of measures of the Member States which have as their object the establishment or functioning of the internal market. While to date there are no national rules dealing with foreign subsidies, several Member States[28] have indicated that they see a need to address the distortions caused by foreign subsidies. It cannot be ruled out that, in the absence of an EU action, at least some Member States could decide to adopt national legislation. Consequently, and in order to avoid unnecessary obstacles that could result from the disparity of national laws, the Commission should propose EU-wide legislation on distortive foreign subsidies.

It is therefore proposed that the proposal be based on Articles 207 and 114 TFEU.

- **Subsidiarity (for non-exclusive competence)**

Trade policy is an exclusive competence of the EU. Consequently, if the proposal were based solely on Article 207 TFEU, the EU institutions, rather than the Member States' governments, could put in place new legislation in relation to distortive foreign subsidies.

On the other hand, the internal market is an area of shared competence. Therefore, for a proposal based on Article 114 TFEU, the Member States can also legislate and adopt legally binding acts, unless the objectives of the proposal could be better achieved at EU level. To date, no Member State has adopted national legislation to address potential distortive effects of foreign subsidies. Furthermore, several Member States have instead called on the Commission to propose draft legislation in this area[29].

The objectives of the proposal cannot be achieved by Member States acting alone. Foreign subsidies cause distortions on the internal market, including in the context of acquisitions of EU targets and of public procurement. The situation is comparable to State aid granted by EU Member States, which by nature has effects on more than one Member State. Likewise, distortions caused by foreign subsidies may have a Union dimension, affecting several Member States.

Addressing distortive foreign subsidies at EU level allows potential beneficiaries of foreign subsidies to know in advance the rules that the Commission will use to assess the existence of

[28] Among others The Netherlands, France, Germany, Poland and Italy

[29] See, for example, above-mentioned contributions from the Netherlands, France, Germany, Poland and Italy.

foreign subsidies and possible distortions they may cause. This guarantees predictability and improves the legal certainty of the system across Member States.

- **Proportionality**

The proposal aims to protect the level playing field in the internal market so that it is not distorted by foreign subsidies. It therefore focuses on two issues: identifying distortive foreign subsidies and remedying the distortions they cause.

For concentrations and public procurement, the proposal involves a system of *ex ante* notification of the largest and potentially most distortive cases. The *ex ante* approach ensures the systematic identification of distortive foreign subsidies in situations where the highest economic value is at stake. In all other market situations, including smaller concentrations and smaller procurement procedures, such subsidies are subject to an *ex officio* procedure that enables the Commission to focus on the most relevant cases. Based on relevant market information, the supervisory authority will then assess the degree of distortion. In any event, foreign subsidies below EUR 5 million are unlikely to be distortive.

The redressive measures in the proposal are based on measures applied in EU State aid control to remove the distortive effect of State aid. As the potentially distortive impact of foreign subsidies on the internal market is similar to that of State aid, the State aid toolbox of remedies provides an efficient set of measures to remedy distortions caused by foreign subsidies. In the case of large concentrations and large procurement procedures, the *ex ante* approach ensures that measures can be decided before the transactions are closed, which gives legal certainty to the undertakings concerned.

The measures in the proposal are proportionate, since they achieve their objective by imposing a burden, in a targeted manner, only on undertakings engaged in an economic activity in the internal market that receive foreign subsidies. The proposal requires the cooperation of the companies under investigation, but the administrative costs will be reasonable and proportionate. The costs will imply some resources to prepare notifications of large subsidised concentrations or public procurement procedures, communicating with the Commission and responding to requests for information.

- **Choice of instrument**

Only a legislative instrument can effectively address the problems identified. A regulation is necessary, as it is directly applicable in Member States, establishes the same level of rights and obligations for private parties, and enables the coherent and effective application of rules across the EU. This is the most suitable instrument for addressing the potential distortions of the internal market by foreign subsidies.

3. RESULTS OF *EX POST* EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

The Commission consulted widely[30] on the proposal:

[30] A detailed overview of the results of the consultations is presented in Annex 2 and Annex 6 to the impact assessment.

– on 17 June 2020, it adopted and published a white paper on foreign subsidies, which launched a 14-week public consultation that finished on 23 September 2020[31];

– on 6 October 2020, it opened a consultation to stakeholders on an inception impact assessment outlining possible policy options, their potential impacts and other elements to be assessed in a detailed impact assessment report;

– between October 2020 and January 2021, it organised a number of bilateral targeted consultations with the most relevant stakeholder representatives[32]; and

– it carried out a structured dialogue with Member States, notably through Council working parties, the public procurement expert group, and bilateral and multilateral exchanges and conferences contributed to the design of policy options.

In general, the public consultations showed strong support for intervention to tackle distortive foreign subsidies in the internal market. Almost all respondents who provided feedback on the inception impact assessment supported legislative action at EU level, possibly complemented by international rules.

The replies received in the consultation on the white paper were highly relevant for the drafting of the proposal. Almost all EU stakeholders, including Member States, welcomed the initiative and agreed on the need for action. The majority agreed with the scope of the approach outlined in the white paper, but stressed the need for a proportionate measure so as not to stifle foreign investment, a concern echoed also by non-EU stakeholders. Many respondents highlighted the need to deal with the lack of transparency of foreign subsidies.

To address distortive foreign subsidies while minimising the administrative burden on companies and public authorities, it is proposed that the notification thresholds for subsidised concentrations and public procurement procedures be set relatively high, in order to capture only the potentially most distortive subsidies. The Commission can pursue cases below the thresholds on its own initiative. Similarly, to increase legal certainty for companies engaged in economic activity in the EU, it is proposed that a minimal level be set below which foreign subsidies are unlikely to distort the internal market. This will have a positive impact particularly on SMEs. Given the numerous requests for consistency in the application of the instrument, it is proposed that the Commission be responsible for enforcing the regulation.

In addition, the feedback in the targeted consultations was used to generate examples of types of subsidy, sectors affected and concrete distortive effects. These were discussed in the impact assessment and used to shape the proposal.

- **Collection and use of expertise**

This initiative is supported by an impact assessment. In addition, the Commission carried out several consultations in 2020 (see above). In-house economic research by the Joint Research Centre further informed the impact assessment. Member States were consulted in several meetings of the Council working parties on competition and public procurement, and in expert group meetings. Finally, a number of Member States' position papers on dealing with

[31] https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12621-Addressing-distortions-caused-by-foreign-subsidies

[32] https://ec.europa.eu/competition/international/overview/foreign_subsidies.html

foreign subsidies[33] and several reports and studies[34] contributed to the design of the instrument.

- **Impact assessment**

The impact assessment underpinning the proposal was considered by the Commission's Regulatory Scrutiny Board, which issued a positive opinion with reservations on 5 March 2021. The Board's opinion, its recommendations and an explanation of how they have been taken into account are included in Annex 1 to the impact assessment accompanying this proposal. Annex 3 to the impact assessment provides an overview of who will be affected by this proposal and how.

The Commission examined various policy options for achieving the general objective of the initiative, i.e. to ensure a level playing field in the internal market for companies that receive foreign subsidies and those that do not:

Option 1 — do nothing (*status quo*);

Option 2 — issue guidance on what information on public support to submit when notifying an acquisition;

Option 3 — amend existing legislation; and

Option 4 — develop a new EU legal instrument with alternatives for various parameters.

The inception impact assessment report proposed a fifth option, which entailed changing international rules. The impact assessment report no longer presented such fifth option and instead included its substantive elements in the baseline scenario, as the Commission will in any event pursue such policy initiative, namely to aim to promote the development of international rules to address negative impacts of subsidies. Options 2 and 3 were discarded at a preliminary stage, as they were unlikely to be effective. Consequently, only option 4 was considered in more detail.

Option 4 proposed several alternatives that were analysed. These alternatives concerned the following parameters:

i) investigative approach;

ii) competence level;

iii) threshold below which foreign subsidies would not be considered distortive;

iv) assessment criteria;

v) a balancing test, allowing to take into account negative and positive effects; and

vi) redressive measures.

Based on the assessment of the impacts of option 4, the sub-options relating to the above parameters were combined to form possible policy packages for all three areas in which

[33] See footnote 15.

[34] *Biennial Report XXIII of the Monopolies Commission ('Competition 2020')*; https://www.monopolkommission.de/images/HG23/Main_Report_XXIII_Chinese_state_capitalism.pdf Mercator Institute for China Studies (MERICS), *Made in China 2025: The making of a high-tech superpower and consequences for industrial countries*, MERICS Papers on China No 2 (December 2016); https://merics.org/sites/default/files/2020-04/Made%20in%20China%202025.pdf

distortive subsidies can be found, i.e. concentrations, public procurement procedures and other market situations.

The preferred option for each of the areas can be presented as a three-tiered investigative tool with the following components:

- Component 1: A notification-based investigative tool for concentrations where the turnover of the EU target exceeds EUR 500 million and the foreign financial contributions exceed EUR 50 million;
- Component 2: A notification-based investigative tool for bids in public tenders with a contract value above EUR 250 million; and
- Component 3: An *ex officio* investigative tool for all other market situations and for concentrations and public procurement procedures below the thresholds for components 1 and 2.

It is proposed that the Commission be the authority enforcing the regulation. Foreign subsidies below EUR 5 million are considered unlikely to be distortive.

The preferred option largely corresponds to the approach presented in the white paper, with two main exceptions[35]:

- while the white paper envisaged a role for Member States in scrutinising public procurement procedures, the proposal involves enforcing all components at EU level. This responds to widespread stakeholder concern that a new instrument on foreign subsidies would be applied inconsistently across Member States and overburden national authorities [36] ; and
- the preferred option includes more detail than the white paper, notably on notification thresholds and the threshold below which foreign subsidies would be considered not to distort the internal market. Such thresholds also respond to widespread stakeholder concerns about administrative burden and are in line with feedback from several stakeholders[37] that the threshold below which subsidies are considered non-distortive should be higher than EUR 200 000 over a 3-year period, as initially proposed.

The *ex ante* notification for the largest and potentially most distortive cases will ensure systematic identification of distortive foreign subsidies in situations of highest economic value. For all other market situations (including smaller concentrations and smaller procurement procedures), distortive foreign subsidies would be identified in an *ex officio* procedure. This approach enables the supervisory authority to focus its attention on the most relevant cases. The preferred option also provides for an effective toolbox of redressive measures to remedy the distortion caused by foreign subsidies.

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[35] While some stakeholders raised doubts about the approach presented in the white paper, the majority of EU stakeholders (Member States and other stakeholders) and some non-EU stakeholders support the initiative (see contributions referenced in Annex 2 and Annex 6 to the impact assessment).

[36] See e.g. the contributions of the Netherlands, European Services Forum (ESF), European Semiconductor Industry Association (ESIA), Government Experts Group on Public Procurement and other stakeholders in Annex 2 and Annex 6 to the impact assessment.

[37] e.g. Czechia, Poland, European Round Table for Industry, Confederation of Danish Industry, Bundesverband der Deutschen Industrie, Eurometaux.

The benefits of the preferred option are expected to include a level playing field in the internal market between companies receiving foreign subsidies and those that do not. This will improve the competitiveness of the latter. Businesses, especially those receiving large foreign subsidies, may incur certain administrative costs when preparing notifications or complying with information requests. However, these costs are reasonable and proportionate.

The impacts of the policy options on different categories of stakeholders are explained in detail in Annex 3 to the impact assessment. To the extent possible, the assessment is both qualitative and quantitative. In view of the high threshold below which subsidies would be considered not to distort the internal market and the high proposed notification thresholds for subsidised concentrations and public procurement transactions, this initiative will not impose an additional burden on SMEs. The burden on the Commission of implementing this initiative is reasonable (mainly redeployment or creation of posts) in the light of the benefits for the economy.

- **Regulatory fitness and simplification**

The proposal is not linked to REFIT, as it concerns an area in which there is currently no EU (or national) legislation.

In view of the high notification thresholds for subsidised concentrations and public procurement transactions, this proposal lays down measures that will apply mainly to recipients of large foreign subsidies, which are also likely to be the most distortive. This will limit the administrative burden on undertakings and public authorities. In addition, because of the high proposed notification thresholds, SMEs will not be impacted by additional administrative burdens as a result of having to submit notifications.

By remedying the distortive effects of foreign subsidies in the internal market, the proposal will create a level playing field for companies that receive foreign subsidies and those that do not, thus improving the competitiveness of companies in the EU. In view of the limited administrative burden on undertakings and the clear framework that this proposal establishes, the risk that the new instrument will negatively impact trade and investment flows is deemed low. Apart from the risk due to administrative burden, the new instrument may reduce the number of concentrations by preventing subsidised concentrations. However, this is the intended effect and should be outweighed by the benefits of restoring undistorted price signals and company valuations, and facilitating concentrations that were previously hindered.

The proposal is internet-ready and appropriate for both physical and digital environments.

- **Fundamental rights**

The proposal is aligned with the EU Charter of Fundamental Rights and respects the freedom to conduct business. The introduction of a new legislative instrument to tackle distortive foreign subsidies is subject to ensuring full respect for the fundamental rights to fair proceedings and good administration.

When acting under the legislative instrument, the Commission’s investigation powers would be subject to the full scope of fair process rights, such as the right to a reasoned decision and access to judicial review, including the possibility to challenge enforcement and sanctioning measures. These rights apply in the event of administrative proceedings.

4. BUDGETARY IMPLICATIONS

In order most effectively to achieve the objectives of this initiative, it is necessary to finance a number of actions at Commission level, involving the redeployment or creation of posts amounting to around 145 full-time equivalents[38]. The human resources expenditure in 2021-2027 will amount to approx. EUR 80.490 million. Other administrative expenses are projected to reach EUR 0. 800 million over that period. Operational expenditure, which will be used to finance the necessary IT infrastructure, studies and consultations to ensure effective enforcement of the instrument will reach approx. EUR 7.825 million. IT development and procurement choices will be subject to pre-approval by the European Commission Information Technology and Cybersecurity Board. Other appropriations of an administrative nature financed from the envelope for specific programmes is budgeted at approx. EUR 1.225 million.

The total administrative expenditure for the implementation of the proposal in 2021-2027 will thus amount to EUR 90.340 million, part of which will be financed from the single market programme. The financing will support investigative and enforcement actions, monitoring activities and market investigations. It will also support a regular review of specific provisions, an evaluation of the regulation and ongoing evaluation of the effectiveness and efficiency of the measures taken. A detailed overview of the costs involved is provided in the financial statement linked to this initiative.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Monitoring and evaluation constitute an important part of the proposal. The monitoring will be continuous and based on operational objectives and specific indicators. Regular and continuous monitoring will cover the following main aspects:

i) the number of distortive foreign subsidies (based on cases); and

ii) the effectiveness of the redressive measures imposed.

In addition, the Commission may monitor developments relating to distortive foreign subsidies in the context of a market investigation.

The effectiveness and efficiency of the proposal will be monitored using pre-defined indicators to establish whether additional rules may be required (e.g. as regards enforcement) to ensure that foreign subsidies no longer distort the internal market. Consequently, the impact of the intervention will be assessed in the context of an evaluation exercise and, if required, a review clause will be activated under which the Commission may take appropriate measures, including legislative proposals.

- **Detailed explanation of the specific provisions of the proposal**

Chapter 1 sets out general provisions, including the subject matter and scope of the regulation (Article 1). It establishes when a foreign subsidy is deemed to exist (Article 2), under what conditions it is considered to distort the internal market (Article 3) and what types of subsidy are most likely to have a distortive effect (Article 4). It describes the balancing that the Commission performs (Article 5) before imposing any redressive measures, and the possible types of redressive measure and commitment (Article 6).

[38] See also impact assessment (Annex III, point 2).

Chapter 2 governs the *ex officio* review of subsidies. More specifically, it establishes that the Commission may, on its own initiative, examine information from any source regarding alleged distortive foreign subsidies (Article 7) under a preliminary review (Article 8) or in the context of an in-depth investigation (Article 9). It then establishes rules in relation to various tools that can be used in the context of procedures under the regulation, which include Commission interim measures (Article 10) and requests for information (Article 11). In addition, the Commission will be able to conduct on-site inspections within the Union (Article 12) and elsewhere (Article 13). In the event of non-cooperation by the undertaking concerned, the Commission can take a decision on the basis of the facts available (Article 14). It can impose fines and periodic penalty payments (Article 15) for procedural infringements, such as the supply of incorrect, incomplete or misleading information in the context of an investigation, and for non-compliance with Commission decisions imposing redressive or interim measures, or commitments. It may also revoke a previous decision and take a new decision (Article 16) where the undertaking concerned acts contrary to its commitments or it appears that the previous decision was based on incomplete, incorrect or misleading information.

Chapter 3 contains specific rules for concentrations. In particular, it lays down the conditions under which a foreign subsidy in a concentration is considered to distort the internal market (Article 17), defines what a concentration is (Article 18) and prescribes when notification of a concentration should be given (Article 19). It provides more detail on the notification obligation by defining the concept of control (Article 20) and explaining how to calculate turnover (Article 21) and the level of financial contribution (Article 22). It sets out when a concentration should be suspended and the corresponding time limits (Article 23). It specifies which procedural rules from Chapter 2 apply to notified concentrations during the preliminary review and in-depth investigation, adapted to the specificities of a notification system (Article 24). The fines and periodic penalty payments (Article 25) set out in Chapter 2 also apply to notified concentrations, complemented by the possibility of imposing them in the event of a notification providing incorrect or misleading information, or of failure to notify or non-compliance with the suspension obligation or a decision prohibiting a concentration.

Chapter 4 contains specific provisions on public procurement procedures. In particular, it lays down the conditions under which a foreign subsidy is considered to distort the internal market in a public procurement procedure (Article 26), sets the notification thresholds (Article 27) and prescribes when a notification in the context of such a procedure is mandatory (Article 28). It specifies which procedural rules from Chapter 2 apply to notified financial contributions in public procurement procedures and the time limits for initiating and ending an in-depth investigation (Article 29). It describes the types of decision that the Commission can adopt (Article 30) and when the award of a public contract to potentially subsidised bidders in public procurement procedures should be suspended (Article 31). Finally, it provides that fines and periodic penalty payments can be imposed as set out in Chapter 2, complemented by the possibility to do so in the event of a notification providing incorrect or misleading information, or of failure to notify (Article 32).

Chapter 5 contains common procedural provisions. It describes the relation between *ex officio* review, notification of a concentration and notification of public procurement (Article 33). It provides for the possibility of opening a market investigation (Article 34) and prescribes limitation periods (Article 35). It also contains an obligation to publish decisions adopted under the regulation (Article 36) and specifies to whom such decisions should be addressed (Article 37). Several provisions set the procedural guarantees before the Commission, in

particular the rights of defence (Article 38) and the protection of professional secrecy (Article 39).

Chapter 6 describes the relationship between the regulation and other legal instruments (Article 40).

Chapter 7 contains further general provisions, such as the committee procedure for decisions (Article 41), as well as the possibility of adopting implementing provisions (Articles 42, 43) and delegated acts (Article 44), in accordance with specific rules on the delegation of powers (Article 45). In addition, there is a provision for a review of the regulation (Article 46). Finally, the regulation contains certain transitional provisions (Article 47) and states when it will enter into force and when it will be applied (Article 48).

2021/0114 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on foreign subsidies distorting the internal market

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 114 and 207 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[1],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) A strong, open and competitive internal market enables both European and foreign undertakings to compete on merits. The Union benefits from a sophisticated and effective system of State aid control, aiming at ensuring fair conditions for all undertakings engaging in an economic activity in the internal market. This State aid control system prevents Member States from granting State aid that unduly distorts competition in the internal market.

(2) At the same time, undertakings might receive subsidies from third countries, that provide public funds which are then used, for instance, to finance economic activities in the internal market in any sector of the economy, such as participation in public procurement tenders, or acquisitions of undertakings, including those with strategic assets such as critical infrastructure and innovative technologies. Such subsidies are currently not subject to Union State aid rules.

(3) Foreign subsidies can distort the internal market and undermine the level playing field for various economic activities in the Union. This could in particular occur in the context of concentrations entailing a change of control over Union undertakings, where such concentrations are fully or partially financed through foreign subsidies, or if undertakings benefiting from foreign subsidies are awarded public contracts in the Union.

(4) No existing Union instruments address distortions caused by foreign subsidies. Trade defence instruments enable the Commission to act when subsidised goods are imported into the Union, but not when foreign subsidies take the form of subsidised investments, or when services and financial flows are concerned. Under the WTO Agreement on Subsidies and Countervailing Measures, the Union has the possibility to initiate State-to-State dispute settlement against certain foreign subsidies granted by WTO members and limited to goods.

[1] OJ C […], […], p. […].

(5) It is therefore necessary to complement existing Union instruments with a new tool to effectively deal with distortions in the internal market caused by foreign subsidies and ensure a level playing field. In particular, the new tool complements Union State aid rules which deal with distortions in the internal market caused by Member State subsidies.

(6) Rules and procedures to investigate foreign subsidies that actually or potentially distort the internal market should be laid down and, where relevant, those distortions should be redressed. Foreign subsidies could distort the internal market if the undertaking benefitting from the foreign subsidy engages in an economic activity in the Union. This Regulation should therefore establish rules for all undertakings engaging in an economic activity in the Union. Given the significance of the economic activities pursued by SMEs, and their contribution to the fulfilment of the Union's key policy goals, special attention is given to the impact of this Regulation on them.

(7) To ensure a level playing field throughout the internal market and consistency in the application of this Regulation, the Commission should be the sole authority competent to apply this Regulation. The Commission should have the power to examine any foreign subsidy to the extent it is in the scope of this Regulation in any sector of the economy on its own initiative relying on information from all available sources. To ensure effective control, in the specific case of large concentrations (mergers and acquisitions) and public procurement procedures above certain thresholds, the Commission should have the power to review foreign subsidies based on a prior notification by the undertaking to the Commission.

(8) Foreign subsidy in the context of this Regulation should be understood as an intervention that meets three cumulative conditions.

(9) There should be a financial contribution provided, directly or indirectly, by the public authorities of a third country. The financial contribution may be granted through public or private entities. Whether a public entity provides a financial contribution should be determined on a case-by-case basis with due regard to elements such as the characteristics of the relevant entity and the legal and economic environment prevailing in the country in which the entity operates including the government's role in the economy. Financial contributions may also be granted through a private entity if its actions can be attributed to the third country.

(10) Such a financial contribution should confer a benefit to an undertaking engaging in an economic activity in the internal market. A financial contribution that benefits an entity engaging in non-economic activities does not constitute a foreign subsidy. The existence of a benefit should be determined on the basis of comparative benchmarks, such as the investment practice of private investors, rates for financing obtainable on the market, a comparable tax treatment, or the adequate remuneration for a given good or service.. If no directly comparable benchmarks are available, existing benchmarks could be adjusted or alternative benchmarks could be established based on generally accepted assessment methods.

(11) The benefit should be conferred to an individual undertaking or industry or several undertakings or industries. The benefit could be established by law or in fact.

(12) Once the existence of a foreign subsidy is established, the Commission should assess whether the foreign subsidy distorts the internal market. Unlike State aid granted by a Member State, foreign subsidies are not generally prohibited. Subsidies in the form of export financing may be a cause of particular concern because of their distortive

effects. This is not the case if such financing is provided in line with the OECD Arrangement on officially supported export credits. The Commission should assess on a case-by-case basis whether a foreign subsidy distorts the internal market.

(13) The lack of transparency concerning many foreign subsidies and the complexity of the commercial reality may make it difficult to unequivocally identify or quantify the impact of a given foreign subsidy on the internal market. To determine the distortion, it therefore appears necessary to use a non-exhaustive set of indicators. When assessing the extent to which a foreign subsidy can improve the competitive position of the undertaking concerned and, in doing so, actually or potentially negatively affects competition in the internal market, the Commission could have regard to certain indicators, including but not limited to the amount and nature of the subsidy, the purpose and conditions attached to the foreign subsidy as well as its use in the internal market.

(14) When applying these indicators, the Commission could take into account different elements such as the size of the subsidy in absolute terms or in relation to the size of the market or to the value of the investment. For instance, a concentration, in the context of which a foreign subsidy covers a substantial part of the purchase price of the target, is likely to be distortive. Similarly, foreign subsidies covering a substantial part of the estimated value of a contract to be awarded in a public procurement procedure are likely to cause distortions. If a foreign subsidy is granted for operating costs, it seems more likely to cause distortions than if it is granted for investment costs. Foreign subsidies to small and medium-sized undertakings may be considered less likely to cause distortions than foreign subsidies to large undertakings. Furthermore, the characteristics of the market, and in particular the competitive conditions on the market, such as barriers to entry, should be taken into account. Foreign subsidies leading to overcapacity by sustaining uneconomic assets or by encouraging investment in capacity expansions that would otherwise not have been built are likely to cause distortions. A foreign subsidy to a beneficiary that shows a low degree of activity in the internal market, measured for instance in terms of turnover achieved in the Union, is less likely to cause distortions than a foreign subsidy to a beneficiary that has a more significant level of activity in the internal market. Finally, foreign subsidies not exceeding EUR 5 million should be deemed, as a general rule, unlikely to distort the internal market within the meaning of this Regulation.

(15) Like certain types of State aid, also certain categories of foreign subsidies, such as unlimited guarantees, are likely to create distortions in the internal market because of their nature. Those categories should not require a detailed assessment based on indicators. An undertaking could in any event show that the foreign subsidy in question would not distort the internal market in the specific circumstances of the case.

(16) The Commission should take into account the positive effects of the foreign subsidy on the development of the relevant subsidised economic activity. The Commission should weigh these positive effects against the negative effects of a foreign subsidy in terms of distortion on the internal market in order to determine, if applicable, the appropriate redressive measure or accept commitments. The balancing may also lead to the conclusion that no redressive measures should be imposed. Categories of foreign subsidies that are deemed most likely to distort the internal market are less likely to have more positive than negative effects.

(17) Where the Commission examines a foreign subsidy on its own initiative, it should have the power to impose redressive measures on an undertaking to remedy any distortion caused by a foreign subsidy in the internal market. Redressive measures should be proportionate and suitable to remedy the distortion at stake. They should include behavioural or structural remedies or the repayment of the foreign subsidy.

(18) The undertaking concerned should have the possibility to offer commitments in order to remedy the distortion caused by the foreign subsidy. If the Commission considers that the commitments offered fully and effectively remedy the distortion, it could accept them and make them binding by decision.

(19) The undertaking concerned could offer to repay the subsidy, together with appropriate interest. The Commission should accept a repayment offered as a commitment if it can ascertain that the repayment fully remedies the distortion, is executed in a transparent manner and is effective in practice, while taking into account the risk of circumvention of the objectives of this Regulation.

(20) Unless the undertakings concerned offer commitments that would fully and effectively remedy the identified distortion, the Commission should have the power to prohibit a concentration or the award of a public contract before it takes place. Where the concentration has already been implemented, notably in cases where no prior notification was required because the notification thresholds were not reached, the distortion may nonetheless be so substantial that it cannot be remedied by behavioural or structural measures or by the repayment of the subsidy. In such cases, the Commission could decide to remedy the distortion by ordering the undertakings concerned to dissolve the concentration.

(21) The Commission should have the power, on its own initiative, to examine any information on foreign subsidies. To this end, it is necessary to establish a procedure consisting of two steps, namely a preliminary review and an in-depth investigation.

(22) The Commission should be given adequate investigative powers to gather all necessary information. It should therefore have the power to request information from any undertaking or association of undertakings throughout the whole procedure. In addition, the Commission should have the power to impose fines and periodic penalty payments for failure to timely supply the requested information or for supplying incomplete, incorrect or misleading information. The Commission could also address questions to Member States or to third countries. Furthermore, the Commission should have the power to make fact-finding visits at the Union premises of the undertaking, or, subject to agreement by the undertaking and the third country concerned, at the premises of the undertaking in the third country. The Commission should also have the power to take decisions on the basis of facts available if the undertaking in question does not cooperate.

(23) Furthermore, where necessary to restore competition in the internal market immediately and to prevent irreparable harm, the Commission should have the power to adopt interim measures.

(24) In all cases where, as a result of the preliminary review, the Commission has sufficient indications of the existence of a foreign subsidy distorting the internal market, the Commission should have the power to launch an in-depth investigation to gather additional relevant information to assess the foreign subsidy, and to allow the interested parties to exercise their rights of defence.

(25) The Commission should close the in-depth investigation by adopting a decision.

(26) The Commission should have appropriate instruments to ensure the effectiveness of commitments and redressive measures. If the undertaking concerned does not comply with a decision with commitments, a decision imposing redressive measures, or a decision ordering interim measures, the Commission should have the power to impose fines and periodic penalty payments.

(27) In order to ensure the correct and effective application of this Regulation, the Commission should have the power to revoke a decision and adopt a new one, where the decision was based on incomplete, incorrect or misleading information, or where an undertaking acts contrary to its commitments or the redressive measures imposed.

(28) Given the potentially significant impact of concentrations on the internal market, the Commission should have the power, upon notification, to examine information on foreign financial contributions in the context of a proposed concentration. Undertakings should not be allowed to implement the concentration prior to the conclusion of the Commission's review.

(29) This examination by the Commission should follow the same procedure as the one where a foreign subsidy is reviewed on the Commission's initiative, subject to adjustments to reflect the specificities of concentrations.

(30) It is necessary to strike a balance between effective protection of the internal market and the need to limit the administrative burden on undertakings subject to this Regulation. Therefore, only concentrations meeting combined thresholds as defined in this Regulation based on the size of the turnover in the Union and the size of the subsidy should be subject to mandatory prior notification.

(31) Below the notification thresholds, the Commission could require the notification of potentially subsidised concentrations that were not yet implemented or the notification of potentially subsidised bids prior to the award of a public contract, if it considers that the concentration or the bid would merit ex-ante review given their impact in the Union. The Commission should also have the possibility to carry out a review on its own initiative of already implemented concentrations or awarded public contracts.

(32) When reviewing a concentration, the assessment of whether there is a distortion in the internal market should be limited to the concentration at stake, and only foreign subsidies granted in the three years prior to the concentration should be considered in the assessment.

(33) The need to address distortive foreign subsidies is especially salient in public procurement, given its economic significance in the internal market and the fact that it is financed by taxpayer funds. The Commission should have the power, upon notification prior to the award of a public contract or concession, to examine information on foreign financial contributions to the participating undertakings in the context of a public procurement procedure. Prior notifications should be mandatory above a threshold set in this Regulation to capture economically significant cases while minimising the administrative burden and not hindering the participation of SMEs in public procurement. That obligation of prior notification above a threshold should also apply to groups of economic operators referred to in Article 26(2) of Directive 2014/23/EU of the European Parliament and of the Council[2], Article 19(2)

[2] Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1).

of Directive 2014/24/EU of the European Parliament and of the Council[3] and Article 37(2) of Directive 2014/25/EU of the European Parliament and of the Council[4]. It should also apply to the main subcontractors and the main suppliers of undertaking.

(34) When a foreign financial contribution is notified in the context of a public procurement procedure, the assessment should be limited to that procedure.

(35) It should be ensured that the principles governing public procurement, notably proportionality, non-discrimination, equal treatment, and transparency, are respected as regards all undertakings involved in the public procurement procedure, regardless of investigations initiated and pending pursuant to this Regulation.

(36) Foreign subsidies that enable an undertaking to submit a tender which is unduly advantageous in relation to the works, supplies or services concerned should be deemed to actually or potentially create a distortion in a public procurement procedure. Those distortions should therefore be assessed on the basis of the non-exhaustive set of indicators described in recitals 13 and 14 as well as the notion of unduly advantageous tender. The indicators should allow to determine how the foreign subsidy distorts competition by improving the competitive position of an undertaking and enabling it to submit an unduly advantageous tender. The opportunity should be given to undertakings to justify that the tender is not unduly advantageous, including by adducing the elements referred to in Article 69(2) of Directive 2014/24/EU. The prohibition of the award should only apply where the advantageous nature of the tender benefiting from foreign subsidies cannot be justified, the tender would be awarded the contract and the undertaking submitting the tender did not offer commitments considered appropriate and sufficient to fully and effectively remove the distortion.

(37) Taking into account the nature of the ex ante review mechanism for concentrations and public procurement awards, and the need for legal certainty regarding these specific transactions, a concentration or public procurement tender notified and assessed under the respective procedures cannot be reviewed again by the Commission on its own initiative. Financial contributions of which the Commission was informed through the notification procedure may however also be relevant outside the concentration or procurement procedure. In order to gather information on foreign subsidies, the Commission should have the possibility to launch investigations regarding specific sectors of the economy, particular types of economic activity or the use of particular foreign subsidy instruments.

(38) For the same reasons, it is appropriate to provide for limitation periods for the imposition and enforcement of fines and periodic penalty payments.

(39) In the interest of transparency and legal certainty, it is appropriate to publish either in full or in a summary form all decisions adopted by the Commission.

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[3] Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

[4] Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

(40) The Commission, when publishing its decisions, should respect the rules on professional secrecy, including the protection of all confidential information, business secrets and personal data, in accordance with Article 339 of the Treaty.

(41) In cases where information marked by the undertaking as confidential or business secret does not seem to be covered by obligations of professional secrecy, it is appropriate to have a mechanism in place according to which the Commission can decide the extent to which such information can be disclosed. Any such decision to reject a claim that information is confidential should indicate a period at the end of which the information will be disclosed, so that the respondent can make use of any judicial protection available to it, including any interim measure.

(42) The undertakings or associations of undertakings concerned by an investigation under this Regulation should have the opportunity of submitting their observations. While ensuring preservation of the rights of defence of the undertakings concerned, it is essential that business secrets be protected.

(43) The implementation of this Regulation by the Union should comply with Union law, the WTO Agreement and be consistent with commitments made under other trade and investment agreements to which the Union or the Member States are parties.

(44) Restrictions to Articles 34, 49, 56 and 63 of the Treaty can be justified by the need to avoid unfair competition, provided that such restrictions, like other restrictions of fundamental freedoms comply with the general principles of Union law, such as proportionality, legal certainty, and with fundamental rights.

(45) The implementation of this Regulation may overlap with sectoral rules, in particular in the area of maritime and air transport. Therefore, it is necessary to clarify the relationship between this Regulation and sectoral instruments dealing with foreign subsidies, namely Regulation (EU) 2016/1035 of the European Parliament and of the Council[5]; Council Regulation (EEC) 4057/86[6]; and Regulation (EU) 2019/712 of the European Parliament and of the Council[7].

(46) Where the Commission adopts a decision at the end of an in-depth investigation, Member States should be adequately involved prior to the decision making in an advisory procedure pursuant to Article 4 of Regulation (EU) No 182/2011 of the European Parliament and of the Council[8]. The choice of this procedure is justified taking into account the role of Member States in competition and State aid instruments, which also aim at levelling the playing field in the internal market.

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5 Regulation (EU) 2016/1035 of the European Parliament and of the Council of 8 June 2016 on protection against injurious pricing of vessels (OJ L 176, 30.6.2016, p. 1).

6 Council Regulation (EEC) No 4057/86 of 22 December 1986 on unfair pricing practices in maritime transport (OJ L 378, 31.12.1986, p. 14).

7 Regulation (EU) 2019/712 of the European Parliament and of the Council of 17 April 2019 on safeguarding competition in air transport, and repealing Regulation (EC) No 868/2004 (OJ L 123, 10.5.2019, p. 4).

8 Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

(47) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission in accordance with Article 291 of the Treaty. Those powers should be exercised to set out the form and content of notifications of concentrations as well as of financial contributions in the context of public procurement procedures, details of disclosure, form and content of transparency requirements, calculation of time-limits, conditions and time-limits for commitments and detailed rules on the procedural steps concerning investigations regarding public procurement procedures. Those powers should be exercised in accordance with Regulation (EU) No 182/2011.

(48) In order to ensure a level playing field on the internal market also in the long term, with a view to ensuring adequate coverage of cases investigated both through notifications as well as ex officio, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of amending the notification thresholds for concentrations and for public procurement procedures, exempting certain categories of undertakings from the notification obligations under this Regulation, as well as amending the time limits for the preliminary review and the in-depth investigations of notified concentrations or notified financial contributions in the context of a public procurement procedure. In relation to financial contributions in the context of a public procurement procedure, the power to adopt such acts should be exercised in a way that takes into account the interests of SMEs. It is of particular importance that the Commission carries out appropriate consultations during the preparations of those acts, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[9]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council should receive all documents at the same time as Member States' experts, and their experts systematically should have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(49) Where a concentration is notifiable pursuant to this Regulation, financial contributions to any of the parties to the concentration granted in the three years prior to the date of application of this Regulation should fall within the scope of this Regulation. In the context of a public procurement procedure, this Regulation should also apply to a financial contribution granted to an undertaking in the three years prior to the date of application of this Regulation,

HAVE ADOPTED THIS REGULATION:

[9] Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission of 13 April 2016 on Better Law-Making (OJ L 123, 12.5.2016, p. 1).

CHAPTER 1: GENERAL PROVISIONS

Article 1

Subject matter and scope

(1) This Regulation lays down rules and procedures for investigating foreign subsidies that distort the internal market and for redressing such distortions. Such distortions may arise with respect to any economic activity, and in particular in concentrations and public procurement procedures.

(2) This Regulation addresses foreign subsidies granted to an undertaking engaging in an economic activity in the internal market. An undertaking acquiring control or merging with an undertaking established in the Union or an undertaking participating in a public procurement procedure is considered to be engaging in an economic activity in the internal market.

Article 2

Existence of a foreign subsidy

(1) For the purpose of this Regulation, a foreign subsidy shall be deemed to exist where a third country provides a financial contribution which confers a benefit to an undertaking engaging in an economic activity in the internal market and which is limited, in law or in fact, to an individual undertaking or industry or to several undertakings or industries.

(2) For the purpose of this Regulation,

(a) a financial contribution shall include:

(i) the transfer of funds or liabilities, such as capital injections, grants, loans, loan guarantees, fiscal incentives, setting off of operating losses, compensation for financial burdens imposed by public authorities, debt forgiveness, debt to equity swaps or rescheduling;

(ii) the foregoing of revenue that is otherwise due; or

(iii) the provision of goods or services or the purchase of goods and services;

(b) the financial contribution provided by the third country shall include the financial contribution provided by:

(i) the central government and government authorities at all other levels;

(ii) foreign public entities, whose actions can be attributed to the third country, taking into account elements such as the characteristics of the entity, the legal and economic environment prevailing in the State in which the entity operates including the government's role in the economy; or

(iii) any private entity whose actions can be attributed to the third country, taking into account all relevant circumstances.

Article 3

Distortions on the internal market

(1) A distortion on the internal market shall be deemed to exist where a foreign subsidy is liable to improve the competitive position of the undertaking concerned in the internal market and where, in doing so, it actually or potentially negatively affects competition on the internal market. Whether there is a distortion on the internal market shall be determined on the basis of indicators, which may include the following:

(a) the amount of the subsidy;

(b) the nature of the subsidy;

(c) the situation of the undertaking and the markets concerned;

(d) the level of economic activity of the undertaking concerned on the internal market;

(e) the purpose and conditions attached to the foreign subsidy as well as its use on the internal market.

(2) A foreign subsidy is unlikely to distort the internal market if its total amount is below EUR 5 million over any consecutive period of three fiscal years.

Article 4

Categories of foreign subsidies most likely to distort the internal market

A foreign subsidy falling in any of the following categories is most likely to distort the internal market:

(1) a foreign subsidy granted to an ailing undertaking, that is to say which will likely go out of business in the short or medium term in the absence of any subsidy, unless there is a restructuring plan that is capable of leading to the long-term viability of that undertaking and includes a significant own contribution by the undertaking;

(2) a foreign subsidy in the form of an unlimited guarantee for debts or liabilities of the undertaking, that is to say without any limitation as to the amount or the duration of such guarantee;

(3) a foreign subsidy directly facilitating a concentration;

(4) a foreign subsidy enabling an undertaking to submit an unduly advantageous tender, on the basis of which the undertaking would be awarded the public contract.

Article 5

Balancing

(1) The Commission shall, where warranted, balance the negative effects of a foreign subsidy in terms of distortion on the internal market with positive effects on the development of the relevant economic activity.

(2) The Commission shall take into account the balancing between the negative and positive effects when deciding whether to impose redressive measures or to accept commitments, and the nature and level of those redressive measures or commitments.

Article 6

Commitments and redressive measures

(1) To remedy the distortion on the internal market actually or potentially caused by a foreign subsidy, the Commission may impose redressive measures. The undertaking concerned may also offer commitments.

(2) Commitments or redressive measures shall fully and effectively remedy the distortion caused by the foreign subsidy in the internal market.

(3) Commitments or redressive measures may consist of the following:

(a) offering access under fair and non-discriminatory conditions to an infrastructure that was acquired or supported by the distortive foreign subsidies unless such fair and non-discriminatory access is already provided for by legislation in force in the Union;

(b) reducing capacity or market presence;

(c) refraining from certain investments;

(d) licensing on fair, reasonable and non-discriminatory terms of assets acquired or developed with the help of foreign subsidies;

(e) publication of results of research and development;

(f) divestment of certain assets;

(g) requiring the undertakings concerned to dissolve the concentration;

(h) repayment of the foreign subsidy, including an appropriate interest rate.

(4) The Commission may impose reporting and transparency requirements.

(5) If an undertaking offers commitments which fully and effectively remedy the distortion on the internal market, the Commission may accept them and make them binding on the undertaking in a decision with commitments according to Article 9(3).

(6) Where the undertaking concerned proposes to repay the foreign subsidy including an appropriate interest rate, the Commission shall accept such repayment as commitment if it can ascertain that the repayment is transparent and effective, while taking into account the risk of circumvention.

CHAPTER 2: EX OFFICIO REVIEW OF FOREIGN SUBSIDIES

Article 7

Ex officio review of foreign subsidies

The Commission may on its own initiative examine information from any source regarding alleged distortive foreign subsidies.

Article 8

Preliminary review

(1) The Commission shall seek all the information it considers necessary to assess, on a preliminary basis, whether the financial contribution under examination constitutes a foreign subsidy and whether it distorts the internal market. To that end, the Commission may in particular:

(a) request information in accordance with Article 11;

(b) conduct inspections in and outside the Union in accordance with Article 12 or Article 13.

(2) Where the Commission, based on the preliminary review, considers that there are sufficient indications that an undertaking has been granted a foreign subsidy that distorts the internal market, it shall

(a) adopt a decision to initiate an in-depth investigation ('decision to initiate the in-depth investigation'), which shall summarise the relevant issues of fact and law and shall include the preliminary assessment of the existence of a foreign subsidy and of the actual or potential distortion on the internal market;

(b) inform the undertaking concerned; and

(c) publish a notice in the Official Journal of the European Union, which invites interested parties, Member States and the third country concerned to express their views in writing within a prescribed period of time.

(3) Where the Commission, after a preliminary assessment, concludes that there are no sufficient grounds to initiate the in-depth investigation, either because there is no foreign subsidy or because there are no indications of an actual or potential distortion on the internal market, it shall close the preliminary review and inform the undertaking concerned.

Article 9

In-depth investigation

(1) During the in-depth investigation, the Commission shall further assess the foreign subsidy distorting the internal market that has been identified in the decision to initiate the in-depth investigation, seeking all the information it considers necessary in accordance with Articles 11, 12 and 13.

(2) Where the Commission finds that a foreign subsidy distorts the internal market pursuant to Articles 3 to 5, it may impose redressive measures ('decision with redressive measures').

(3) Where the Commission finds that a foreign subsidy distorts the internal market pursuant to Articles 3 to 5 and the undertaking concerned offers commitments, which the Commission deems appropriate and sufficient to fully and effectively remedy the distortion, it may by a decision make these commitments binding on the undertaking ('decision with commitments'). A decision accepting the repayment of a foreign subsidy in accordance with Article 6(6) shall be considered a decision with commitments.

(4) The Commission shall adopt a no objection decision where it finds that:

(a) the preliminary assessment as set out in its decision to initiate the in-depth investigation is not confirmed; or

(b) a distortion on the internal market is outweighed by positive effects within the meaning of Article 5.

Article 10

Interim measures

The Commission may take interim measures, where:

(1) there are indications that a financial contribution constitutes a foreign subsidy and distorts the internal market; and

(2) there is a serious risk of substantial and irreparable damage to competition on the internal market.

Article 11

Information requests

(1) The Commission may require an undertaking concerned to provide all necessary information.

(2) The Commission may also request such information from other undertakings or associations of undertakings.

(3) A request for information to an undertaking or an association of undertakings shall:

(a) state its legal basis and its purpose, specify what information is required and set an appropriate time limit within which the information is to be provided;

(b) contain a statement that if the information supplied is incorrect, incomplete or misleading fines and periodic penalty payments provided for in Article 15 could be imposed;

(c) contain a statement that, pursuant to Article 14, a lack of cooperation from the undertaking concerned allows the Commission to take a decision on the basis of the facts that are available.

(4) At the request of the Commission, Member States shall provide it with all necessary information to carry out the duties assigned to it by this Regulation.

(5) The Commission may also request a third country concerned to provide all necessary information.

Article 12

Inspections within the Union

(1) The Commission may conduct the necessary inspections of undertakings.

(2) Where the Commission undertakes such an inspection, the officials authorised by the Commission to conduct an inspection shall be empowered:

(a) to enter any premises and land of the undertaking concerned;

(b) to examine books and other business records and take, or request copies;

(c) to ask any representative or member of staff of the undertaking for explanations on facts or documents relating to the subject-matter and purpose of the inspection and to record the answers;

(d) to seal any business premises and books or records for the period and to the extent necessary for the inspection.

(3) The undertaking concerned shall submit to inspections ordered by decision of the Commission. The officials and other accompanying persons authorised by the Commission to conduct an inspection shall exercise their powers upon production of a Commission decision:

(a) specifying the subject matter and purpose of the inspection;

(b) containing a statement that, pursuant to Article 14, a lack of cooperation from the undertaking concerned allows the Commission to take a decision on the basis of the facts that are available;

(c) referring to the possibility to impose fines and penalties provided for in Article 15.

(4) In good time before the inspection, the Commission shall give notice of the inspection to the Member State in whose territory it is to be conducted.

(5) Officials of the Commission as well as officials authorised or appointed by the Member State in whose territory the inspection is to be conducted shall, at the request of the Member State or of the Commission, actively assist the officials and other accompanying persons authorised by the Commission. To this end, they shall enjoy the powers specified in paragraph 2.

(6) Where officials or other accompanying persons authorised by the Commission find that an undertaking opposes an inspection within the meaning of this Article, the Member State concerned shall provide them with the necessary assistance and shall request, where appropriate, the assistance of the police or of an equivalent enforcement authority so as to enable them to conduct their inspection.

(7) Upon request of the Commission, a Member State shall in its own territory carry out any inspection or other fact-finding measure under its national law in order to establish whether there is a foreign subsidy distorting the internal market.

Article 13

Inspection outside the Union

In order to carry out the duties assigned to it by this Regulation, the Commission may conduct inspections in the territory of a third country, provided that the undertaking concerned has given its consent and the government of the third country has been officially notified and has agreed to the inspection. Article 12(1), (2), and (3) points (a) and (b) shall apply by analogy.

Article 14

Non-cooperation

(1) The Commission may take a decision pursuant to Article 8 or Article 9 on the basis of the facts available, if an undertaking concerned or a third country:

(a) provides incomplete, incorrect or misleading information in response to an information request under Article 11;

(b) fails to provide the information requested within the time limit prescribed by the Commission;

(c) refuses to submit to the Commission's inspection within or outside the Union ordered under Article 12 or Article 13; or

(d) otherwise impedes the preliminary review or the in-depth investigation.

(2) Where an undertaking or association of undertakings, a Member State or the third country has supplied incorrect or misleading information to the Commission, that information shall be disregarded.

(3) Where an undertaking concerned, including a public undertaking which is directly or indirectly controlled by the State, fails to provide the necessary information to determine whether a financial contribution confers a benefit to it, that undertaking may be deemed to have received such benefit.

(4) When applying facts available, the result of the procedure may be less favourable to the undertaking concerned than if it had cooperated.

Article 15

Fines and periodic penalty payments

(1) The Commission may impose by decision fines and periodic penalty payments where an undertaking concerned or an association of undertakings, intentionally or negligently:

(a) supplies incorrect, incomplete or misleading information in response to a request made pursuant to Article 11, or does not supply the information within the prescribed time limit;

(b) produces the required books or other records related to the business in incomplete form during inspections under Article 12;

(c) in response to a question asked in accordance with Article 12(2), point (c),

(i) gives an incorrect or misleading answer,

(ii) fails to rectify within a time-limit set by the Commission an incorrect, incomplete or misleading answer given by a member of staff, or

(iii) fails or refuses to provide a complete answer on facts relating to the subject-matter and purpose of an inspection ordered by a decision adopted pursuant to Article 12(3);

(d) refuses to submit to inspections ordered under Article 12 or has broken seals affixed in accordance with Article 12(2)(d).

(2) Fines imposed in the cases referred to in paragraph 1 shall not exceed 1 % of the aggregate turnover of the undertaking or association of undertakings concerned in the preceding business year.

(3) Periodic penalty payments imposed in the cases referred to in paragraph 1 shall not exceed 5% of the average daily aggregate turnover of the undertaking or association of undertakings concerned in the preceding business year for each working day of delay, calculated from the date established in the decision, until it submits complete and correct information as requested by the Commission.

(4) Before adopting any decision in accordance with paragraph 1, the Commission shall set a final time limit of two weeks to receive the missing information from the undertaking or from the association of undertakings concerned.

(5) Where an undertaking concerned does not comply with a decision with commitments pursuant to Article 9(3), a decision ordering interim measures pursuant to Article 10 or a decision imposing redressive measures pursuant to Article 9(2), the Commission may impose by decision:

(a) fines not exceeding 10 % of the aggregate turnover of the undertaking concerned in the preceding business year; and

(b) periodic penalty payments not exceeding 5% of the average daily aggregate turnover of the undertaking concerned in the preceding business year for each day of non-compliance, starting from the day of the Commission decision imposing such penalty payments, until the Commission finds that the undertaking concerned complies with the decision.

(6) In fixing the amount of the fine or periodic penalty payment, regard shall be had to the nature, gravity and duration of the infringement, taking due account of the principles of proportionality and appropriateness.

Article 16

Revocation

The Commission may revoke a decision taken pursuant to Article 9(2), (3) or (4) and adopt a new decision in any of the following cases:

(1) where the undertaking concerned acts contrary to its commitments or the redressive measures imposed;

(2) where the decision was based on incomplete, incorrect or misleading information.

CHAPTER 3: CONCENTRATIONS

Article 17

Distortions on the internal market by foreign subsidies in concentrations

In a concentration, the assessment whether there is a distortion on the internal market within the meaning of Articles 3 or 4 shall be limited to the concentration at stake. Only foreign subsidies granted in the three calendar years prior to the conclusion of the agreement, the

announcement of the public bid, or the acquisition of a controlling interest shall be considered in the assessment.

Article 18

Definition of and notification thresholds for concentrations

(1) For the purposes of this Regulation, a concentration shall be deemed to arise where a change of control on a lasting basis results from any of the following:

(a) the merger of two or more previously independent undertakings or parts of undertakings;

(b) the acquisition, by one or more persons already controlling at least one undertaking, or by one or more undertakings, whether by purchase of securities or assets, by contract or by any other means, of direct or indirect control of the whole or parts of one or more other undertakings.

(2) The creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity shall constitute a concentration within the meaning of paragraph 1.

(3) For the purposes of Article 19, a 'notifiable concentration' shall be deemed to arise where, in a concentration,

(a) the acquired undertaking or at least one of the merging undertakings is established in the Union and generates an aggregate turnover in the Union of at least EUR 500 million; and

(b) the undertakings concerned received from third countries an aggregate financial contribution in the three calendar years prior to notification of more than EUR 50 million.

(4) In the creation of a joint venture referred to in paragraph 2, a 'notifiable concentration' shall be deemed to arise where:

(a) the joint venture itself or one of its parent undertakings is established in the Union and generates an aggregate turnover in the Union of at least EUR 500 million; and

(b) the joint venture itself and its parent undertakings received from third countries an aggregate financial contribution in the three calendar years prior to notification of more than EUR 50 million.

Article 19

Prior notification of concentrations

(1) Notifiable concentrations shall be notified to the Commission prior to their implementation and following the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest.

(2) The undertakings concerned may also notify the proposed concentration when they demonstrate to the Commission a good faith intention to conclude an agreement or, in the case of a public bid, where they have publicly announced their intention to

make such a bid, provided that the intended agreement or bid would result in a notifiable concentration under paragraph 1.

(3) A concentration which consists in a merger within the meaning of Article 18(1), point (a) or in the acquisition of joint control within the meaning of Article 18(1), point (b) shall be notified jointly by the parties to the merger or by those acquiring joint control as the case may be. In all other cases, the notification shall be done by the person or undertaking acquiring control of the whole or parts of one or more undertakings.

(4) If the undertakings concerned fail to meet their obligation to notify, the Commission may review a notifiable concentration in accordance with this Regulation by requesting the notification of that concentration. In that case the Commission shall not be bound by the time limits referred to in Article 23(1) and (4).

(5) The Commission may request the prior notification of any concentration which is not a notifiable concentration within the meaning of Article 18 at any time prior to its implementation where the Commission suspects that the undertakings concerned may have benefitted from foreign subsidies in the three years prior to the concentration. That concentration shall be deemed to be a notifiable concentration for the purposes of this Regulation.

Article 20

Definition of control

(1) For the purposes of Article 18, control shall be constituted by rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by:

(a) ownership or the right to use all or part of the assets of an undertaking;

(b) rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking.

(2) Control shall be acquired by persons or undertakings which:

(a) are holders of the rights or entitled to rights under the contracts concerned; or

(b) while not being holders of such rights or entitled to rights under such contracts, have the power to exercise the rights deriving therefrom.

Article 21

Calculation of turnover

(1) Aggregate turnover shall comprise the amounts derived by the undertakings concerned in the preceding financial year from the sale of products and the provision of services falling within the undertakings' ordinary activities after deduction of sales rebates and of value added tax and other taxes directly related to turnover. The aggregate turnover of an undertaking concerned shall not include the sale of products or the provision of services between any of the undertakings referred to in paragraph 4.

Turnover in the internal market shall comprise products sold and services provided to undertakings or consumers in the internal market.

(2) By way of derogation from paragraph 1, where the concentration consists of the acquisition of parts, whether or not constituted as legal entities, of one or more undertakings, only the turnover relating to the parts which are the object of the concentration shall be taken into account with regard to the seller or sellers.

However, two or more transactions within the meaning of the first subparagraph which take place within a two-year period between the same persons or undertakings shall be treated as one and the same concentration arising on the date of the latest transaction.

(3) Instead of turnover, the following shall be used for the following categories of undertakings:

(a) for credit institutions and other financial institutions, the sum of the following income items as defined in Council Directive 86/635/EEC[10], after deduction of value added tax and other taxes directly related to those items, where appropriate:

(i) interest income and similar income;

(ii) income from securities:

– income from shares and other variable yield securities,

– income from participating interests,

– income from shares in affiliated undertakings;

(iii) commissions receivable;

(iv) net profit on financial operations;

(v) other operating income;

(b) for insurance undertakings, the value of gross premiums written which shall comprise all amounts received and receivable in respect of insurance contracts issued by or on behalf of the insurance undertakings, including also outgoing reinsurance premiums, and after deduction of taxes and parafiscal contributions or levies charged by reference to the amounts of individual premiums or the total volume of premiums;

For the purposes of point (a), for a credit or financial institution in the internal market the turnover shall comprise the income items, as defined in that point, which are received by the branch or division of that institution established in the internal market.

(4) Without prejudice to paragraph 2, the aggregate turnover of an undertaking concerned shall be calculated by adding together the respective turnovers of:

(a) the undertaking concerned;

(b) those undertakings in which the undertaking concerned, directly or indirectly:

(i) owns more than half the capital or business assets,

[10] Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (OJ L 372, 31.12.1986, p. 1).

(ii) has the power to exercise more than half the voting rights,

(iii) has the power to appoint more than half the members of the supervisory board, the administrative board or bodies legally representing the undertakings,

(iv) has the right to manage the undertakings' affairs;

(c) those undertakings which have in the undertaking concerned any of the rights or powers referred to in point (b);

(d) those undertakings in which an undertaking as referred to in point (c) has any of the rights or powers referred to in point (b);

(e) those undertakings in which two or more undertakings as referred to in points (a) to (d) jointly have any of the rights or powers referred to in point (b).

(5) Where undertakings concerned jointly have the rights or powers listed in paragraph 4, point (b), in calculating the aggregate turnover of the undertakings concerned,

(a) account shall be taken of the turnover resulting from the sale of products and the provision of services between the joint undertaking and any third undertakings, and this turnover shall be apportioned equally amongst the undertakings concerned;

(b) no account shall be taken of the turnover resulting from the sale of products or the provision of services between the joint undertaking and each of the undertakings concerned or any other undertaking connected with any one of them, as set out in paragraph 4, points (b) to (e).

Article 22

Aggregation of financial contributions

The aggregate financial contribution to an undertaking concerned shall be calculated by adding together the respective financial contributions received from third countries by all undertakings referred to in Article 21(4), points (a) to (e).

Article 23

Suspension of concentrations and time limits

(1) A notifiable concentration shall not be implemented before its notification.

In addition, the following time limits shall apply:

(a) where the Commission receives the complete notification, the concentration shall not be implemented for a period of 25 working days after that receipt;

(b) where the Commission initiates an in-depth investigation no later than 25 working days after receipt of the complete notification, the concentration shall not be implemented for a period of 90 working days after the opening of the in-depth investigation; that period shall be extended by 15 working days where the undertakings concerned offer commitments pursuant to Article 6 with a view to remedy the distortion on the internal market;

(c) where the concentration has been declared not to distort the internal market pursuant to a decision under Article 24(3), point (a) or point (b), it may be implemented thereafter.

Each period shall begin on the working day following that of the receipt of the complete notification or of the adoption of the relevant Commission decision, respectively.

(2) Paragraph 1 shall not prevent the implementation of a public bid or of a series of transactions in securities including those convertible into other securities admitted to trading on a market such as a stock exchange, by which control is acquired from various sellers, provided that:

(a) the concentration is notified to the Commission pursuant to Article 19 without delay; and

(b) the acquirer does not exercise the voting rights attached to the securities in question or does so only to maintain the full value of its investments based on a derogation granted by the Commission under paragraph 3.

(3) The Commission may, upon request, grant a derogation from the obligations laid down in paragraphs 1 or 2. The request to grant a derogation shall state the grounds for the derogation. In deciding on the request, the Commission shall take into account in particular the effects of the suspension on one or more undertakings concerned by the concentration or on a third party and the risk of a distortion on the internal market posed by the concentration. Such a derogation may be granted subject to certain conditions and obligations in order to ensure that there is no distortion on the internal market. A derogation may be applied for and granted at any time, either before notification or after the transaction.

(4) The time limits provided for in paragraph 1, point (b) shall be extended if the undertakings concerned make a request to that effect not later than 15 working days after the opening of the in-depth investigation pursuant to Article 8. The undertakings concerned may make only one such request. Likewise, at any time following the opening of the in-depth investigation, the time limits provided for in paragraph 1, point (b) may be extended by the Commission with the agreement of the undertakings concerned. The total duration of any extension or extensions pursuant to this paragraph shall not exceed 20 working days.

(5) The time limits provided for in paragraph 1 may exceptionally be suspended where the undertakings have not supplied the complete information which the Commission has requested pursuant to Article 11 or have refused to submit to an inspection ordered by decision pursuant to Article 12.

(6) The Commission may adopt a decision pursuant to Article 24(3) without being bound by the time limits referred to in paragraphs 1 and 4, in cases where:

(a) it finds that a concentration has been implemented in breach of the commitments attached to a decision taken under Article 24(3), point (a), which has found that, in the absence of the commitments, the concentration would distort the internal market; or

(b) a decision has been revoked pursuant to Article 24(1).

(7) Any transaction carried out in breach of paragraph 1 shall be considered valid only after a decision pursuant to Article 24(3) has been adopted.

(8) This Article shall have no effect on the validity of transactions in securities including those convertible into other securities admitted to trading on a market such as a stock exchange, unless the buyer and seller were aware or ought to have been aware that the transaction was carried out in breach of paragraph 1.

Article 24

Procedural rules applicable to the preliminary review and the in-depth investigation of notified concentrations

(1) Articles 8, 9(1), (3) and (4), 10, 11, 12, 13, 14 and 16 shall apply to notified concentrations.

(2) The Commission may initiate an in-depth investigation under Article 8(2) no later than 25 working days after receipt of the complete notification.

(3) After the in-depth investigation, the Commission shall adopt one of the following decisions:

(a) a decision with commitments pursuant to Article 9(3);

(b) a no objection decision pursuant to Article 9(4);

(c) a decision prohibiting a concentration, where the Commission finds that a foreign subsidy distorts the internal market pursuant to Articles 3 to 5.

(4) Decisions pursuant to paragraph 3 shall be adopted within 90 working days after the opening of the in-depth investigation at the latest, extended as the case may be pursuant to Article 23(1), point (b), (4) and (5). If the Commission does not adopt a decision within that time limit, the undertakings concerned shall be allowed to implement the concentration.

(5) In any request for information to an undertaking, the Commission shall specify whether time limits will be suspended pursuant to Article 23(5), in the event the undertaking fails to provide complete information in the prescribed time limit.

(6) The Commission may, where it finds that a concentration has already been implemented and that concentration has been found to distort the internal market pursuant to Articles 3 to 5 adopt one of the following measures:

(a) require the undertakings concerned to dissolve the concentration, in particular through the dissolution of the merger or the disposal of all the shares or assets acquired, to restore the situation prevailing prior to the implementation of the concentration; in circumstances where restoration of the situation prevailing before the implementation of the concentration is not possible through dissolution of the concentration, the Commission may take any other measure appropriate to achieve such restoration as far as possible;

(b) order any other appropriate measure to ensure that the undertakings concerned dissolve the concentration or take other restorative measures as required in its decision.

The measures referred to in points (a) and (b) may be imposed either in a decision pursuant to paragraph 3, point (c), or by separate decision

The Commission may adopt any of the measures referred to in points (a) or (b) where it finds that a concentration has been implemented in breach of a decision taken pursuant to paragraph (3), point (a), which has found that, in the absence of the commitments, the concentration would fulfil the criterion laid down in paragraph 3, point (c).

(7) The Commission may order interim measures referred to in Article 10 also where:

(a) a concentration has been implemented in breach of Article 19;

(b) a concentration has been implemented in breach of a decision with commitments under this Article, paragraph 3, point (a).

Article 25

Fines and periodic penalty payments applicable to concentrations

(1) The Commission may impose fines and periodic penalty payments as set out in Article 15.

(2) In addition, the Commission may impose by decision on undertakings concerned fines not exceeding 1 % of their aggregate turnover in the preceding business year where they, intentionally or negligently, supply incorrect or misleading information in a notification pursuant to Article 19 or supplement thereto.

(3) The Commission may impose by decision on undertakings concerned fines not exceeding 10 % of their aggregate turnover in the preceding business year where they, intentionally or negligently:

(a) fail to notify a notifiable concentration in accordance with Article 19 prior to its implementation, unless they are expressly authorised to do so by Article 23;

(b) implement a notified concentration in breach of Article 23;

(c) implement a notified concentration prohibited in accordance with Article 24(3), point (c).

CHAPTER 4: PUBLIC PROCUREMENT PROCEDURES

Article 26

Distortions on the internal market by foreign subsidies in public procurement procedures

Foreign subsidies that cause or risk causing a distortion in a public procurement procedure shall be understood as foreign subsidies that enable an undertaking to submit a tender that is unduly advantageous in relation to the works, supplies or services concerned. The assessment of whether there is a distortion on the internal market pursuant to Article 3 and whether a tender is unduly advantageous in relation to the works, supplies or services concerned shall be limited to the public procurement procedure at stake. Only foreign subsidies granted during the three years prior to the notification shall be taken into account in the assessment.

Article 27

Definition of and notification threshold in public procurement procedures

(1) For the purposes of Article 28, a public procurement procedure means:

(a) any type of award procedure laid down in Directive 2014/24/EU and Directive 2014/25/EU of the European Parliament and of the Council for the conclusion of a public contract as defined in Article 2(1), point (5) of Directive 2014/24/EU or of a supply, works and service contract as defined in Article 2, point (1) of Directive 2014/25/EU;

(b) a procedure for the award of a works or a service concession as defined in Article 5, point (1) of Directive 2014/23/EU of the European Parliament and of the Council;

(c) procedures for the award of contracts referred to in Article 10(4), point (a) of Directive 2014/23/EU, Article 9(1), point (a) of Directive 2014/24/EU and Article 20(1) point (a) of Directive 2014/25/EU.

(2) For the purpose of Article 28, a notifiable foreign financial contribution in an EU public procurement procedure shall be deemed to arise where the estimated value of that public procurement is equal or greater than EUR 250 million.

(3) Procedures for the award of contracts falling within the scope of Directive 2009/81/EC of the European Parliament and of the Council[11] do not fall under this Chapter.

(4) For the purposes of this Chapter, the definitions of the terms "contracting authority" in Article 6 of Directive 2014/23/EU Article 2(1) of Directive 2014/24/EU, Article 3 of Directive 2014/25/EU, , and "contracting entity" in Article 7 of Directive 2014/23/EU and Article 4 of Directive 2014/25/EU shall apply.

Article 28

Prior notification of foreign financial contributions in the context of public procurement procedures

(1) When submitting a tender or a request to participate in a public procurement procedure, undertakings shall either notify to the contracting authority or the contracting entity all foreign financial contributions received in the three years preceding that notification or confirm in a declaration that they did not receive any foreign financial contributions in the last three years. Undertakings which do not submit such information or declaration shall not be awarded the contract.

(2) The obligation to notify foreign financial contributions under this paragraph shall extend to economic operators, groups of economic operators referred to in Article 26(2) of Directive 2014/23/EU, Article 19(2) of Directive 2014/24/EU and Article 37(2) of Directive 2014/25/EU, main subcontractors and main suppliers. A

[11] Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC (OJ L 216, 20.8.2009, p. 76).

subcontractor or supplier shall be deemed to be main where their participation ensures key elements of the contract performance and in any case where the economic share of their contribution exceeds 30% of the estimated value of the contract.

(3) For groups of economic operators, main subcontractors and main suppliers, the lead economic operator shall ensure notification.

(4) The contracting authority or the contracting entity shall transfer the notification to the Commission without delay.

(5) Where the undertaking, economic operators or groups of economic operators referred to in paragraph 1 fail to notify a foreign financial contribution, or where such a notification is not transferred to the Commission, the Commission may initiate a review.

(6) Where the Commission suspects that an undertaking may have benefitted from foreign subsidies in the three years prior to the submission of the tender or request to participate in the public procurement procedure, it may request the notification of the foreign financial contributions received by that undertaking in any public procurement procedure which are not notifiable under Article 27(2) or fall within the scope of paragraph 5 of this Article, at any time before the award of the contract. Once the Commission has requested the notification of such a financial contribution, it is deemed to be a notifiable foreign financial contribution in a public procurement procedure.

Article 29

Procedural rules applicable to the preliminary review and the in-depth investigation of notified financial contributions in public procurement procedures

(1) Articles 8, 9 (1), (3) and (4), 11, 12, 13, 14, 16 and 22 shall apply to notified financial contributions in public procurement procedures.

(2) The Commission shall carry out a preliminary review no later than 60 days after it received the notification.

(3) The Commission shall decide whether to initiate an in-depth investigation within the time limit for completing the preliminary review and inform the undertaking concerned and the contracting authority or the contracting entity without delay.

(4) The Commission may adopt a decision closing the in-depth investigation no later than 200 days after it received the notification. In exceptional circumstances, this time limit may be extended after consultation with the concerned contracting authority or contracting entity.

Article 30

Commission decisions

(1) Where, after an in-depth investigation, the Commission finds that an undertaking benefits from a foreign subsidy which distorts the internal market pursuant to Articles 3 to 5, and where the undertaking concerned offers commitments that fully and effectively remove the distortion on the internal market, it shall adopt a decision

with commitments pursuant to Article 9(3). The assessment under Article 5 shall not result in a modification of the initial tender submitted by the undertaking that is incompatible with Union law.

(2) Where the undertaking concerned does not offer commitments or where the Commission considers that the commitments referred to in paragraph 1 are neither appropriate nor sufficient to fully and effectively remove the distortion it shall adopt a decision prohibiting the award of the contract to the undertaking concerned ("decision prohibiting the award of the contract").

(3) Where, after an in-depth investigation, the Commission does not find that an undertaking benefits from a foreign subsidy which distorts the internal market, it shall adopt a decision pursuant to Article 9(4).

Article 31

Evaluations in public procurement procedures involving a notification and suspension of award

(1) During the preliminary review and the in-depth investigation, the evaluation of tenders in a public procurement procedure may continue. The contract shall not be awarded before the expiry of the time limit set in Article 29(2).

(2) If a decision to open an in-depth investigation is taken pursuant to Article 29(3), the contract shall not be awarded to an undertaking submitting a notification under Article 28 until the Commission reaches a decision under Article 30(3) or the time limit set in Article 29(4) elapses. If the Commission has not adopted a decision within this time limit, the contract may be awarded to any undertaking, including the one submitting the notification.

(3) The contract may be awarded to an undertaking submitting a declaration under Article 28 before the Commission takes any of the decisions referred to in Article 30 or before the time limit laid down in Article 29(4) elapses only if the tender evaluation has established that the undertaking in question has in any case submitted the most economically advantageous tender.

(4) Where the Commission issues a decision under Article 30(2) regarding the most economically advantageous tender, the contract may be awarded to the undertaking having submitted the next best tender not subject to a decision under Article 30(2).

(5) Where the Commission adopts a decision in accordance with Article 30(1) or (3), the contract may be awarded to any undertaking having submitted the most economically advantageous tender, including, as the case may be, the undertaking(s) having submitted the notification under Article 28.

(6) In all cases, the contracting authority or the contracting entity shall inform the Commission of any decision relating to the outcome of the public procurement procedure.

(7) The principles governing public procurement, including proportionality, non-discrimination, equal treatment, and transparency, shall be observed as regards all undertakings involved in the public procurement procedure. The investigation of foreign subsidies pursuant to this Regulation shall not result in the contracting authority or the contracting entity treating the undertaking concerned in a way that is contrary to those principles.

(8) Each time limit shall begin on the working day following that of the receipt of the notification or of the adoption of the relevant Commission decision.

Article 32

Fines and periodic penalty payments applicable to financial contributions in the context of public procurement procedures

(1) The Commission may impose fines and periodic penalty payments as set out in Article 15.

(2) In addition, the Commission may impose by decision on the undertakings concerned fines not exceeding 1 % of their aggregate turnover in the preceding business year, where they intentionally or negligently supply incorrect or misleading information in a notification pursuant to Article 28 or supplement thereto;

(3) The Commission may impose by decision on the undertakings concerned fines not exceeding 10 % of their aggregate turnover in the preceding business year where they, intentionally or negligently, fail to notify a subsidy in accordance with Article 28 during the public procurement procedure.

CHAPTER 5: COMMON PROCEDURAL PROVISIONS

Article 33

Relation between procedures

(1) A financial contribution notified in the context of a concentration under Article 19 may be relevant and assessed again in relation to another economic activity.

(2) A financial contribution notified in the context of a public procurement procedure under Article 28 may be relevant and assessed again in relation to another economic activity.

Article 34

Market investigation

(1) Where the information available substantiates a reasonable suspicion that foreign subsidies in a particular sector, for a particular type of economic activity or based on a particular subsidy instrument may distort the internal market, the Commission may conduct a market investigation into the particular sector, the particular type of economic activity or into the use of the subsidy instrument concerned. In the course of that market investigation, the Commission may request the undertakings or associations of undertakings concerned to supply the necessary information and may carry out the necessary inspections. The Commission may also request the Member State or third country concerned to supply information.

(2) The Commission may publish a report on the results of its market investigation into particular sectors, particular types of economic activity or particular subsidy instruments and invite comments from interested parties.

(3) The Commission may use the information obtained from such market investigations in the framework of procedures under this Regulation.

(4) Articles 11, 12, 13 and 15 of this Regulation shall apply.

Article 35

Limitation periods

(1) The powers of the Commission under Article 9 shall be subject to a limitation period of ten years, starting on the day on which a foreign subsidy is granted to the undertaking concerned. Any action taken by the Commission under Articles 8, 11, 12 or 13 with respect to a foreign subsidy shall interrupt the limitation period. After each interruption, the limitation period shall start to run afresh.

(2) The powers of the Commission to impose fines and periodic penalty payments under Articles 15, 25 and 32 shall be subject to a limitation period of three years, starting on the day on which the infringement referred to in Articles 15, 25 or 32 took place. In the case of continuing or repeated infringements, the limitation period shall start on the day on which the infringement ceases. Any action taken by the Commission with respect to an infringement referred to in Articles 15, 25 or 32 shall interrupt the limitation period for the imposition of fines or periodic penalty payments. After each interruption, the limitation period shall start to run afresh.

(3) The powers of the Commission to enforce decisions imposing fines and periodic penalty payments under Articles 15, 25 and 32 shall be subject to a limitation period of five years, starting on the day on which the Commission decision imposing fines or periodic penalty payments was taken. Any action taken by the Commission, or by a Member State acting upon request of the Commission, intended to enforce payment of the fine or periodic penalty payment shall interrupt that limitation period. After each interruption, the limitation period shall start to run afresh.

Article 36

Publication of decisions

(1) The Commission shall publish a summary notice of the decisions adopted pursuant to Article 8(2).

(2) The Commission shall publish the decisions adopted pursuant to Article 9(2), (3) and (4), Article 24(3), and Article 30(1), (2) and (3) in the Official Journal of the European Union.

(3) When publishing summary notices and decisions, the Commission shall take due account of the legitimate interests of undertakings in the protection of their business secrets and other confidential information.

Article 37

Addressees of decisions

(1) Decisions adopted pursuant to Articles 8, 9, 15, 24(3), 25, 30(1) and 32 shall be addressed to the undertakings or to the association of undertakings concerned. The Commission shall notify the decision to the addressee without delay and shall give the addressee the opportunity to indicate to the Commission which information it considers to be confidential. The Commission shall provide the contracting authority or the contracting entity concerned with a copy of any Commission decision addressed to an undertaking participating in a public procurement procedure.

(2) Decisions adopted pursuant to Article 30(2) and (3) shall be addressed to the contracting authority or the contracting entity concerned. The Commission shall provide the undertaking to which the award of the public contract is prohibited with a copy of that decision.

Article 38

Disclosure and rights of defence

(1) The Commission shall, before adopting a decision pursuant to Articles 9, 15, 24(3) point (c), 25, 30(2) or 32 give the undertaking concerned the opportunity to submit observations on the grounds on which the Commission intends to adopt its decision.

(2) The Commission shall base its decision only on grounds on which the undertakings concerned have been given the opportunity to submit their observations.

Article 39

Professional secrecy

(1) Information acquired under this Regulation shall be used only for the purposes for which it was acquired.

(2) The Commission, its officials and other persons working under its supervision shall not disclose information covered by the obligation of professional secrecy that they have acquired under this Regulation.

(3) Paragraphs 1 and 2 shall not prevent publication of statistics and reports which do not contain information allowing to identify specific undertakings or associations of undertakings.

CHAPTER 6: RELATIONSHIP TO OTHER INSTRUMENTS

Article 40

Relationship to other instruments

(1) This Regulation is without prejudice to the application of Articles 101, 102, 106, 107 and 108 of the Treaty, Council Regulation (EC) No 1/2003[12] and Council Regulation (EC) No 139/2004[13].

(2) This Regulation is without prejudice to the application of Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016[14].

(3) This Regulation is without prejudice to the application of Regulation (EU) 2019/452 of the European Parliament and of the Council[15].

(4) This Regulation takes precedence over Regulation (EU) 2016/1035 of the European Parliament and of the Council until that Regulation becomes applicable pursuant to its Article 18. Where, after that date, a foreign subsidy falls within the scope of application of both Regulation (EU) 2016/1035 and this Regulation, Regulation (EU) 2016/1035 takes precedence. However, the provisions applicable to public procurement and concentrations of this Regulation take precedence over Regulation (EU) 2016/1035.

(5) This Regulation takes precedence over Council Regulation (EEC) No 4057/86.

(6) This Regulation is without prejudice to the application of Regulation (EU) 2019/712 of the European Parliament and of the Council. Notifiable concentrations, as defined in Article 18 of this Regulation, involving air carriers shall be subject to the provisions of Chapter 3. Public procurement procedures, as defined in Article 27 of this Regulation, involving air carriers shall be subject to the provisions of Chapter 4.

(7) An investigation pursuant to this Regulation shall not be carried out and measures shall not be imposed or maintained where such investigation or measures would be contrary to the Union's obligations emanating from any relevant international agreement it has entered into. In particular, no action shall be taken under this Regulation which would amount to a specific action against a subsidy within the meaning of Article 32.1 of the Agreement on Subsidies and Countervailing Measures. This Regulation shall not prevent the Union from exercising its rights or fulfilling its obligations under international agreements.

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12 Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1).

13 Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p. 1).

14 Regulation (EU) 2016/1037 of the European Parliament and of the Council on protection against subsidised imports from countries not members of the European Union (OJ L 176, 30.6.2016, p. 55).

15 Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (OJ L 79I , 21.3.2019, p. 1).

CHAPTER 7: TRANSITIONAL AND FINAL PROVISIONS

Article 41

Committee procedure for decisions

Decisions pursuant to Articles 9, 24(3) and 30 shall be adopted in accordance with the advisory procedure referred to in Article 43(2).

Article 42

Committee procedure for implementing acts

(1) The Commission is empowered to adopt implementing acts concerning:

(a) the form, content and procedural details of notifications of concentrations pursuant to Article 19;

(b) the form, content and procedural details of notifications of foreign financial contributions in public procurement procedures pursuant to Article 28;

(c) details of the disclosure pursuant to Article 38;

(d) the form content and procedural details of transparency requirements;

(e) detailed rules on the calculation of time limits;

(f) the conditions and time limits for proposing commitments under Article 30;

(g) detailed rules on the procedural steps referred to in Article 28, 29, 30 and 31 concerning investigations regarding public procurement procedures.

(2) Implementing acts referred to in paragraph 1 shall be adopted in accordance with the advisory procedure referred to inin Article 43(2).

Article 43

Committee

(1) The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

(2) Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

Article 44

Delegated acts

(1) The Commission is empowered to adopt delegated acts for the purposes of:

(a) amending the thresholds for notifications as set out in Articles 18 and 27, in the light of the practice of the Commission during the first five years of application of this Regulation, and taking into account the effectiveness of application;

(b) exempting certain categories of undertakings concerned from the obligation to notify pursuant to Articles 19 and 28, in light of the practice of the Commission in the first five years of application of this Regulation, in case this practice allows to identify economic activities where foreign subsidies are unlikely to distort the internal market;

(c) amending the timelines for review and in-depth investigations as set out in Articles 24 and 29.

(2) Delegated acts referred to in paragraph 1 shall be adopted in accordance with Article 45.

Article 45

Exercise of the delegation

(1) The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

(2) The power to adopt delegated acts referred to in Article 44 shall be conferred on the Commission for an indeterminate period of time starting two years after the date of entry into force of this Regulation.

(3) The delegation of power referred to in Article 44 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect on the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

(4) Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.

(5) As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

(6) A delegated act adopted pursuant to Article 44 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 46

Review

Within five years after the entry into force of this Regulation at the latest, the Commission shall present a report to the European Parliament and the Council on the application of this Regulation, accompanied, where the Commission considers it appropriate, by relevant legislative proposals.

Article 47

Transitional provisions

(1) This Regulation shall apply to foreign subsidies granted in the ten years prior to the date of application of this Regulation where such foreign subsidies distort the internal market after the start of application of this Regulation.

(2) This Regulation shall apply to foreign financial contributions granted in the three years prior to the date of application of this Regulation where such foreign financial contributions were granted to an undertaking notifying a concentration or notifying financial contributions in the context of a public procurement procedure pursuant to this Regulation.

(3) This Regulation shall not apply to concentrations for which the agreement was concluded, the public bid was announced, or a controlling interest was acquired before the date of application of the Regulation.

(4) This Regulation shall not apply to public procurement procedures initiated before the date of application of the Regulation.

Article 48

Entry into force and date of application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from [date: six months after entry into force].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Regulation of the European Parliament and of the Council on foreign subsidies distorting the internal market

1.2. Policy area(s) concerned

Policy area: Competition/Single Market

The budgetary impact concerns the new tasks entrusted with the Commission, including the direct supervisory tasks.

1.3. The proposal/initiative relates to:

☒ **a new action**

☐ **a new action following a pilot project/preparatory action**[54]

☐ **the extension of an existing action**

☐ **a merger or redirection of one or more actions towards another/a new action**

1.4. Objective(s)

1.4.1. General objective(s)

The general objective of this initiative is to restore the level playing field on the internal market so that it is not distorted by foreign subsidies.

1.4.2. Specific objective(s)

This initiative has two specific objectives.

1. Identify the most distortive subsidies: This specific objective addresses the issue that there is a general lack of information about subsidies at international level and that there are no criteria and procedures to assess the potential distortion of the EU internal market caused by foreign subsidies.

2. Remedy the distortions caused by foreign subsidies: This objective addresses the issue that there are no tools to remedy distortions caused by foreign subsidies once identified.

1.4.3. Expected result(s) and impact

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

Stakeholder group	Practical implications
Businesses	First, businesses potentially benefitting from foreign subsidies will be the stakeholders most affected by the initiative. This may potentially concern any undertaking, namely undertakings ultimately owned by foreign and EU nationals. The notification obligation introduced for concentrations and public procurement bids that exceed certain thresholds will result in an administrative burden on these businesses.

[54] As referred to in Article 58(2)(a) or (b) of the Financial Regulation.

	Furthermore, if the Commission initiates an ex-officio investigation in all other market situations, the undertakings concerned will need to submit the requested information. If undertakings are found to have benefitted from distortive foreign subsidies, they will be subject to redressive measures such as the repayment of the subsidy. Second, businesses which do not benefit from distortive foreign subsidies will benefit from the Regulation because it will restore and preserve the level playing field in the internal market. Thirdly, the Regulation will not affect much SMEs. The notification thresholds are likely to be too high to affect them. Furthermore, the high threshold below which subsidies are unlikely to be distortive – which is 25 times higher than the de minimis for State Aid – is also likely to be too high to affect most SMEs.
Consumers	Although consumers will not be directly affected by the new legislation, the Regulation can have a slightly negative economic impact on consumers in the short run since it may lead to an increase in prices, although this is not expected to be significant. In the long run, however, consumers will benefit from ex ante control of potentially subsidised concentrations. Notably, a control of subsidised concentrations can spur innovation and efficiencies since non-subsidised undertakings will then have better chances to achieve economies of scale. Moreover, addressing distortive foreign subsidies also beyond concentrations shall improve competition in the internal market, which ultimately benefits consumers through lower prices and better products.
Third country States	Public authorities from third countries will not be directly affected by the Regulation. The Commission as an enforcer may, however, engage with them as regards information requests or more generally, in consultations throughout the procedure. In general, this instrument may prompt third countries to increase efforts to seek multilateral solutions as well as to reassess the use of subsidies in their investment policies.
Public authorities	The Commission will be the most affected public authority by the Regulation, as the Commission will become the sole enforcer of the investigative tools. Ex-ante control of subsidised concentrations may require about 40 FTEs; ex-ante control of subsidised bids in public procurement 45 FTEs and ex-officio control of all other market situations involving distortive foreign subsidies may require around 60 FTEs. To a much lesser extent, national authorities and contracting authorities are likely to be affected by the Regulation in the medium and long term as the Commission is likely to seek establishing coordination mechanisms with national authorities to better enforce the investigative instrument.

1.4.4. Indicators of performance

The proposed indicators mainly rely on internal Commission data sources or consultations that will be conducted by the Commission. The initiative is planned to be evaluated within 5 years after entry into force. The evaluation will examine in particular whether, and to what extent, the Regulation will have contributed to the improvement of the functioning of the internal market. The indicators proposed to monitor the achievement of policy objectives pursued by this Regulation are presented below.

Specific objectives	**Monitoring indicators**	**Sources of data and/or data collection methods**	**Data collected already?**	**Actors responsible for data collection**
Identify the most distortive subsidies	The yearly number of cases of alleged distortive foreign subsidies dealt with by the supervisory authority	Sources of information - Notifications - Third party submissions of market information - Ex officio cases	No	Commission
	Share of cases of foreign subsidies found to be distortive vs. total number of cases	Record of all final decisions finding distortions caused by foreign subsidies.	No	Commission
	Share of cases cleared thanks to the balancing test vs. total number of cases.	Record of all final decisions finding that positive effects outweigh the distortions.	No	Commission
Remove distortions caused by foreign subsidies	Stakeholder perceptions of the impacts of the imposed redressive measures	Consultation with EU stakeholders on their perceptions of the impacts of redressive measures	No	Commission

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

The Regulation should be directly applicable. By the time the Regulation starts to be applied, the Commission should put in place effective procedures for the enforcement of the Regulation, in particular, for the functioning of the ex-ante notification systems on potentially subsidised concentrations and public procurement bids, but also to carry out market investigations and to perform any other investigative, enforcement and monitoring powers.

Once the Regulation enters into force and information on foreign subsidies becomes increasingly available, the Commission will build up expertise on the effectiveness of the process. Should the Commission consider, in light of this information, that the procedures can be improved, streamlined or simplified, it may decide to modify the appropriate thresholds or exempt certain categories of undertakings from the obligation to notify through a delegated act.

The initiative is planned to be evaluated within 5 years after entry into force. The evaluation will examine in particular whether, and to what extent, the Regulation will have contributed to the improvement of the functioning of the internal market.

1.5.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting

from Union intervention which is additional to the value that would have been otherwise created by Member States alone.

Reasons for action at European level (ex-ante):

The root cause of the problem is the existence of foreign subsidies, causing distortions in the EU internal market, in the absence of any regulatory mechanism to prevent or remedy such distortions. While the existing EU toolbox includes some rules to deal with foreign subsidies in certain market circumstances, these rules are not sufficient, leaving a 'regulatory gap'. Since the Union has exclusive competence in the areas of competition and common commercial policy, Member States are unable to resolve the issue by individual policy actions. The regulatory gap is described in more detail in sections 1.5.3. and 1.5.4 below.

Subsidies are typically part of broader industrial strategies of third countries. Countries have the right to develop and implement their own industrial policies including the granting of subsidies, which may however distort markets in other countries. According to data recorded by the Global Trade Alert (GTA), the number of subsidy measures implemented worldwide has been increasing steadily in recent years. By the end of 2020, there were 1724 subsidy measures in place implemented by the EU's top five trading partners (China: 205, USA: 999, UK: 104, Russia: 414 and Switzerland: 2). Three of these countries (USA, Switzerland and China) are also the main partners in terms of greenfield FDI into the EU. The same five countries reported to the WTO the following subsidy amounts for 2018: China (520 billion EUR), USA (17 billion EUR), Russia (3.8 billion EUR), UK (888 million EUR), Switzerland (697 million EUR). Evidence seems to suggest that these notified amounts are underestimated. The combination of increasing subsidisation and high levels of trade and investment activity between the EU and its trading partners creates a growing risk of distortions on the EU internal market.

Expected generated Union added value (ex-post):

There seems to be an added value of EU action. Notably, the objectives and added value of a control of foreign subsidies can be compared to those of the existing State aid control i.e. to ensure effective competition and a level playing field in the internal market. The compatibility criteria in State aid ensure that the amount of aid is kept to the minimum necessary and proportionate to achieving an objective of common interest. Member States are therefore prevented from spending excessive and thus distortive amounts of State aid or from entering into 'subsidy races' with each other. The publicly available information on Member States' support also fosters market discipline. Such benefits could not be achieved at Member State level.

Moreover, having a Regulation at EU level allows potential beneficiaries of foreign subsidies to know ex ante the rules that the competent supervisory authority will use to assess the existence of and possible distortions caused by foreign subsidies. This guarantees predictability and increases the legal certainty of the system across different Member States.

1.5.3. Lessons learned from similar experiences in the past

Below (and in the section 1.5.4.), an overview is given of existing EU and international instruments in the area of competition, trade, public procurement and in certain sector specific legislation, demonstrating the existing regulatory gap to address the distortions in the EU internal market caused by foreign subsidies.

As regards EU competition rules, EU State Aid rules only apply to financial support granted by EU Member States and aim to ensure that EU government interventions do not distort competition and intra-EU trade. No such control mechanism exists as regards distortive subsidies granted by third countries. The EU merger and antitrust rules aim to prevent significant distortions of competition due to mergers and acquisitions that would create a 'significant impediment to effective competition' or due to anticompetitive practices of undertakings. They do not specifically take into account whether an undertaking's conduct, for instance in the form of anti-competitive pricing results from or was facilitated by foreign subsidies.

Furthermore, the FDI Screening Regulation allows Member States to screen foreign investments, which are likely to have an impact on a Member State's security and public order by considering its effects on critical assets and infrastructure. The Regulation, however, does not specifically tackle the issue of distortions caused by foreign subsidies on the internal market.

As regards public procurement, the existing EU legal framework does not specifically address distortions to the EU procurement markets caused by foreign subsidies. Directives 2014/24/EU and 2014/25/EU allow contracting authorities to reject abnormally low offers if it can be established that a bidder has obtained incompatible State aid, but the Directives do not contain any corresponding provision for foreign subsidies. In addition, while the grant of foreign subsidies can be considered in the overall assessment of a bid, any rejection of an offer as abnormally low needs to be justified by demonstrating that the foreign subsidy impedes the viability of the offer and the bidder's capacity to execute the contract at the (abnormally low) price offered.

The International Procurement Instrument (IPI) aims to incentivise trading partners to negotiate with the EU the opening of their procurement markets for EU businesses. Once adopted, it would enforce the principle of balanced reciprocal market access for EU business to third countries' procurement markets, but it will not be able tackle distortions caused by foreign subsidies within the EU.

Inter-governmental agreements (IGAs) are concluded to facilitate investment. They may cover organising procurements intended for joint implementation or exploitation of a project, especially in large infrastructure. Such procurements are exempted from EU public procurement legislation provided the conditions laid down in Article 9 of Directive 2014/24/EU are fulfilled , though they always have to be compatible with the EU Treaties. Distortive effects of foreign subsidies are not specifically scrutinised under such agreements.

1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments

The initiative can be fully financed through redeployment within the relevant heading of the Multiannual Financial Framework (MFF). The financial impact on operational appropriations will be entirely covered by the allocations foreseen in the MFF 2021-27 under the financial envelopes of the Single Market Programme.

The initiative will benefit from the existing expertise in the areas of competition, trade defence and public procurement, which may create synergies between existing instruments and decrease the necessary costs.

In the area of trade policy, the WTO SCM Agreement as well as the trade defence instruments (TDIs) allow the EU to react to unfair competition in terms of injurious

imports of goods which are unfairly priced below their normal value (anti-dumping instrument) or subsidised (anti-subsidy instrument). The EU anti-dumping and anti-subsidy rules, however, only apply to the import of goods and do not cover services, investment or other financial flows in relation to undertakings operating in the EU.

At the international level, the EU can bring litigation against a WTO Member before a WTO panel for breaches of the SCM Agreement. However, the scope of application of the SCM Agreement is also limited to trade in goods. Subsidies are not excluded from the scope of application of the WTO General Agreement on Trade in Services (GATS). In fact, GATS includes an inbuilt mandate to further negotiate disciplines for services subsidies.

As regards bilateral Free Trade Agreements (FTAs), there are large differences as regards the provisions on subsidies. Most FTAs focus on transparency and consultations in case of distortive subsidies. Some include provisions prohibiting subsidies considered particularly harmful (such as unlimited guarantees). Agreements signed with some neighbouring countries include the commitment to put in place a subsidy control system inspired by EU State Aid rules. Although the scope of those agreements is to address subsidies that affect trade between the EU and the respective third country, jurisdictions that have in place such subsidy control systems are expected to be better placed to identify and address subsidies that distort the EU internal market. Should those cases occur, the FTAs normally do not provide for timely solutions to address such distortive subsidies.

Regulation 2019/712 on safeguarding competition in air transport allows the Commission to conduct investigations if it finds evidence of a practice distorting competition among EU air carriers and in the air transport services markets. It also covers subsidies to third country air carriers, but not to other actors of the aviation chain and does not contain any specific rules on public procurement or subsidised acquisitions of EU targets.

Finally, Regulation (EU) 2016/1035 on protection against injurious pricing of vessels would allow the EU to act against the sale of vessels that are sold at less than normal value and therefore cause injury to the Union industry, if it were to apply. However, while this Regulation has formally entered into force, it does not apply before the entry into force of the OECD Shipbuilding Agreement, as set out in Article 18 of that Regulation. Given that the OECD Shipbuilding Agreement never entered into force (and is not expected to do so) due to insufficient ratification, Regulation (EU) 2016/1035 does not apply.

1.5.5. Assessment of the different available financing options, including scope for redeployment

The initiative can be fully financed through redeployment within the relevant heading of the Multiannual Financial Framework (MFF). The financial impact on operational appropriations will be entirely covered by the allocations foreseen in the MFF 2021-27 under the financial envelopes of the Single Market Programme.

1.6. Duration and financial impact of the proposal/initiative

☐ **limited duration**

– ☐ in effect from [DD/MM]YYYY to [DD/MM]YYYY

– ☐ Financial impact from YYYY to YYYY for commitment appropriations and from YYYY to YYYY for payment appropriations.

☒ **unlimited duration**

– Implementation with a start-up period from 2022 to 2025,

– followed by full-scale operation.

1.7. Management mode(s) planned[55]

☒ **Direct management** by the Commission

– ☒ by its departments, including by its staff in the Union delegations;

– ☐ by the executive agencies

☐ **Shared management** with the Member States

☐ **Indirect management** by entrusting budget implementation tasks to:

– ☐ third countries or the bodies they have designated;

– ☐ international organisations and their agencies (to be specified);

– ☐ the EIB and the European Investment Fund;

– ☐ bodies referred to in Articles 70 and 71 of the Financial Regulation;

– ☐ public law bodies;

– ☐ bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;

– ☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;

– ☐ persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

– *If more than one management mode is indicated, please provide details in the 'Comments' section.*

Comments

The Commission will be solely responsible for the enforcement of the Regulation.

[55] Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: https://myintracomm.ec.europa.eu/budgweb/EN/man/budgmanag/Pages/budgmanag.aspx

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

The Regulation will be evaluated and reviewed 5 years after entry into force. The evaluation will examine in particular whether, and to what extent, the specific objectives have contributed to the improvement of the functioning of the internal market. The Commission will report on the findings to the European Parliament, the Council and the European Economic and Social Committee.

Moreover, in the context of the enforcement of the new instrument, the Commission will continuously monitor the effectiveness and efficiency of the measures applied. The activities carried out by the Commission in relation to the new Regulation will be reported in the Annual Competition Report.

In addition, a review may be required if additional rules to control the distortive effects of foreign subsidies in the EU internal market are considered, including at the international level.

2.2. Management and control system(s)

2.2.1. Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed

With regard to the implementation of the Regulation, the Commission will be exclusively competent to enforce the obligations stemming from the Regulation, including the assessment of the notifications of potentially subsidised concentrations and bids in EU public procurement procedures.

If an undertaking fails to notify an otherwise notifiable subsidised transaction, the Commission may impose penalties and fines. If the Commission concludes that a foreign subsidy distorts the internal market, it may impose redressive measures or accept commitments, including the repayment of the foreign subsidy.

A dialogue between the Commission and undertakings concerned by the application of the Regulation may be required to ensure that the undertakings comply with the implemented measures, including the possible repayment of the subsidy, fines or other penalties.

The internal control framework is built on the implementation of the Commission's Internal Control Principles. In line with the requirement of the Financial Regulation, an important objective of the Commission's 'budget focused on results strategy' is to ensure cost-effectiveness when designing and implementing management and control systems which prevent or identify and correct errors.

The activities requiring financial resources will be implemented mainly through public procurement under direct management mode. Therefore the associated legality and regularity risks are considered to be (very) low.

There will be a constant link with policy work, which will ensure the necessary flexibility for adapting the resources to actual policy needs in an area subject to frequent changes.

2.2.2. Information concerning the risks identified and the internal control system(s) set up to mitigate them

The following risks related to the implementation of the proposed Regulation have been identified:

1) Retaliatory action directed at EU companies

A new legislative instrument may risk retaliation measures by those third countries which perceive the option as hampering their companies. To counter any such concerns, the Regulation is based on principles similar to EU State aid rules, it closes an existing legal gap and restores the level playing field in the internal market. Companies from third countries which do not benefit from subsidies are supportive of the instrument. The Regulation will apply in an objective and non-discriminatory manner to all undertakings active in the EU irrespective of their ownership and thus it will be consistent with the EU's international obligations. The adoption of the Regulation may also further incentivise non-EU countries to develop a State aid control system similar to the EU and to (re-)engage in negotiations to agree on international rules for subsidies, for example under the WTO. In any event, such retaliatory measures would likely not be in line with WTO rules as they would be discriminatory if a third country does not have in place an equivalent system for the control of domestic subsidies.

2) Unexpected increase in administrative burden for companies

The Regulation includes the possibility to modify the appropriate thresholds or exempt certain categories of undertakings from the obligation to notify through a delegated act if certain notified transactions are found not to cause distortions. The risks associated with unnecessary administrative burden could also be minimised through a guidance on the application of the Regulation.

3) Unexpected increase in administrative burden for public authorities

Enforcing the proposed Regulation will result in cases to be dealt with by the Commission and thus in an increase in administrative costs (labour costs, equipment and material cost, as well as overheads). If an unexpectedly high number of notifications is received, there may be a shortage of staff, management difficulties and additional costs. However, the Commission may decide not to take action if the case does not raise a systemic issue, nor have a significant impact on the EU internal market.

2.2.3. Estimation and justification of the cost-effectiveness of the controls (ratio of 'control costs ÷ value of the related funds managed'), and assessment of the expected levels of risk of error (at payment & at closure)

N/A

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.

The prevention and protection measures focus on increasing transparency in management meetings and contacts with stakeholders, following the best public procurement practices, including usage of e-procurement and e-submission tool. The actions also will prevent and detect possible conflict of interests.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff.[56]	from EFTA countries [57]	from candidate countries[58]	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
1	03 01 Single Market Programme	Non-Diff.	YES	NO	NO	NO
1	03 02 01 01 Single Market Programme	Diff	YES	NO	NO	NO
1	03 02 01 05 Single Market Programme	Diff	YES	NO	NO	NO
7	20 02 06 Other management expenditure	Non-diff.	NO	NO	NO	NO

[56] Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

[57] EFTA: European Free Trade Association.

[58] Candidate countries and, where applicable, potential candidates from the Western Balkans.

3.2. Estimated financial impact of the proposal on appropriations

3.2.1. Summary of estimated impact on operational appropriations

– ☐ The proposal/initiative does not require the use of operational appropriations

– ☒ The proposal/initiative requires the use of operational appropriations, as explained below:

–

Heading of multiannual financial framework	1	Single Market Innovation

EUR million (to three decimal places)

			2021	**2022**	**2023**	**2024**	**2025**	**2026**	**2027**	**Post 2027**	**TOTAL**
Operational appropriations											
Operational appropriations – 03 02 01 01 Single Market Programme	Commitments	(1a)	--	0,725	0,775	0,450	0,450	0,450	0,450		3,300
	Payments	(2a)	--	0,363	0,750	0,613	0,450	0,450	0,450	0,225	3,300
Operational appropriations – 03 02 01 05 Single Market Programme	Commitments	(1b)	--	0,725	0,950	0,800	0,600	0,875	0,575		4,525
	Payments	(2b)	--	0,363	0,838	0,875	0,700	0,738	0,725	0,288	4,525
Appropriations of an administrative nature financed from the envelope of specific programmes[59]											
Budget line	03.010101.02	(3)	--	--	0,175	0,350	0,150	0,425	0,125		1,225
• TOTAL operational appropriations	Commitments	(4)	--	1,450	1,725	1,250	1,050	1,325	1,025		7,825
	Payments	(5)	--	0,725	1,588	1,488	1,150	1,188	1,175	0,513	7,825
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)	--	--	0,175	0,350	0,150	0,425	0,125		1,225

TOTAL appropriations	Commitments	=4+6	--	**1,450**	**1,900**	**1,600**	**1,200**	**1,750**	**1,150**		**9,050**

[59] Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

under HEADING 1 of the multiannual financial framework	Payments	=5+6	--	**0,725**	**1,763**	**1,838**	**1,300**	**1,600**	**1,300**	**0,513**	**9,050**

Heading of multiannual financial framework	**7**	'Administrative expenditure'

EUR million (to three decimal places)

		2021	2022	2023	2024	2025	2026	2027	Post 2027	TOTAL
• Human resources		--	3,040	9,260	15,480	17,570	17,570	17,570		80,490
• Other administrative expenditure		--	0,050	0,150	0,150	0,150	0,150	0,150		0,800
TOTAL	Appropriations	--	**3,090**	**9,410**	**15,630**	**17,720**	**17,720**	**17,720**		**81,290**

TOTAL appropriations under HEADING 7 of the multiannual financial framework	(Total commitments = Total payments)	--	**3,090**	**9,410**	**15,630**	**17,720**	**17,720**	**17,720**		**81,290**

EUR million (to three decimal places)

		2021	2022	2023	2024	2025	2026	2027	Post 2027	TOTAL
TOTAL appropriations under HEADINGS 1 to 7 of the multiannual financial framework	Commitments	--	**4,540**	**11,310**	**17,230**	**18,920**	**19,470**	**18,870**	**0,000**	**90,340**
	Payments	--	**3,815**	**11,173**	**17,468**	**19,020**	**19,333**	**19,020**	**0,513**	**90,340**

3.2.2. Estimated output funded with operational appropriations

Operational appropriations will be used to finance the necessary IT infrastructure, studies and consultations to ensure effective implementation and enforcement of the instrument.

It is not possible to provide an exhaustive list of outputs to be delivered by means of financial interventions, average cost and numbers as requested by this section as this is a new initiative and there is no previous statistical data to draw from. The impact assessment accompanying the proposal for a Regulation estimated that there may be around 30 notified cases of subsidised concentration per year, around 36 notified cases of subsidised bids in public procurement and between 30-45 ex-officio cases per year in other market situations, including concentrations and public procurement procedures below the notification thresholds.

The Regulation aims at addressing distortions caused by foreign subsidies by:

1. Identifying the most distortive subsidies; and
2. Remedying the distortion caused by foreign subsidies.

These two specific objectives will be monitored using four monitoring indicators as described in section 1.4.4.:

a. The yearly number of cases of alleged distortive foreign subsidies dealt with by the supervisory authority

b. Share of cases of foreign subsidies found to be distortive vs. total number of cases

c. Share of cases cleared thanks to the balancing test vs. total number of cases.

d. Stakeholder perceptions of the impacts of the imposed redressive measures.

In addition, the effectiveness of the instrument will be monitored and reported on to ensure cost-effectiveness of the resources used for the implementation and enforcement of the Regulation.

3.2.3. Summary of estimated impact on administrative appropriations

– ☐ The proposal/initiative does not require the use of appropriations of an administrative nature

– ☒ The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	2021	2022	2023	2024	2025	2026	2027	TOTAL
HEADING 7 of the multiannual financial framework								
Human resources	--	3,040	9,260	15,480	17,570	17,570	17,570	80,490
Other administrative expenditure	--	0,050	0,150	0,150	0,150	0,150	0,150	0,800
Subtotal HEADING 7 of the multiannual financial framework	**--**	**3,090**	**9,410**	**15,630**	**17,720**	**17,720**	**17,720**	**81,290**

Outside HEADING 7[60] of the multiannual financial framework								
Human resources	--	--	--	--	--	--	--	--
Other expenditure of an administrative nature	--	--	0,175	0,350	0,150	0,425	0,125	1,225
Subtotal outside HEADING 7 of the multiannual financial framework	**--**	**--**	**0,175**	**0,350**	**0,150**	**0,425**	**0,125**	**1,225**

TOTAL	**--**	**3,090**	**9,585**	**15,980**	**17,870**	**18,145**	**17,845**	**82,515**

The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

60 Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

3.2.3.1. Estimated requirements of human resources

– ☐ The proposal/initiative does not require the use of human resources.

– ☒ The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full time equivalent units

		2021	2022	2023	2024	2025	2026	2027	post-2027
• Establishment plan posts (officials and temporary staff)									
20 01 02 01 (Headquarters and Commission's Representation Offices)			**20**	**50**	**80**	**80**	**80**	**80**	**80**
20 01 02 03 (Delegations)									
01 01 01 01 (Indirect research)									
01 01 01 11 (Direct research)									
Other budget lines (specify)									
• External staff (in Full Time Equivalent unit: FTE)[61]									
20 02 01 (AC, END, INT from the 'global envelope')				20	40	65	65	65	65
20 02 03 (AC, AL, END, INT and JPD in the delegations)									
XX 01 xx **yy zz** [62]	- at Headquarters								
	- in Delegations								
01 01 01 02 (AC, END, INT - Indirect research)									
01 01 01 12 (AC, END, INT - Direct research)									
Other budget lines (specify)									
TOTAL			**20**	**70**	**120**	**145**	**145**	**145**	**145**

XX is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	Monitor compliance with the new Regulation, carry out relevant case work, draft decisions, conduct market investigations.
External staff	Monitor compliance with the new Regulation, provide assistance to officials and temporary staff in carrying out relevant case work, drafting decisions, conducting market investigations. Handling IT project management, including the notification portal and document management system. Providing clerical support to the relevant case teams.

[61] AC= Contract Staff; AL = Local Staff; END= Seconded National Expert; INT = agency staff; JPD= Junior Professionals in Delegations.

[62] Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

3.2.4. Compatibility with the current multiannual financial framework

The proposal/initiative:

– ☒ can be fully financed through redeployment within the relevant heading of the Multiannual Financial Framework (MFF).

The initiative can be fully financed through redeployment within the relevant heading of the Multiannual Financial Framework (MFF). The financial impact on operational appropriations will be entirely covered by the allocations foreseen in the MFF 2021-27 under the financial envelopes of the Single Market Programme.

– ☐ requires use of the unallocated margin under the relevant heading of the MFF and/or use of the special instruments as defined in the MFF Regulation.

– ☐ requires a revision of the MFF.

3.2.5. Third-party contributions

The proposal/initiative:

– ☒ does not provide for co-financing by third parties

– ☐ provides for the co-financing by third parties estimated below:

Appropriations in EUR million (to three decimal places)

	Year **N**[63]	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations co-financed								

63 Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

3.3. Estimated impact on revenue

– ☐ The proposal/initiative has no financial impact on revenue.

– ☒ The proposal/initiative has the following financial impact:

  – ☐ on own resources

  – ☒ on other revenue

  – please indicate, if the revenue is assigned to expenditure lines ☐

EUR million (to three decimal places)

Budget revenue line: Chapter 42 – fines and penalties	Appropriations available for the current financial year	Impact of the proposal/initiative[64]						
		Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
Article …….								

Other remarks (e.g. method/formula used for calculating the impact on revenue or any other information).

The amount of the revenue cannot be estimated in advance as it concerns fines on undertaking for not complying with obligations laid down in the Regulation.

64 As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.